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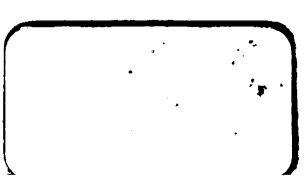

MODERN PRECEDENTS

IN

CONVEYANCING;

WITH

VARIATIONS

ADAPTING THEM TO DIFFERENT CIRCUMSTANCES OF TITLE:

AND

COPIOUS EXPLANATORY AND PRACTICAL

NOTES,

ON THE NATURE AND USE OF THE PROVISIONS CONTAINED IN THEM.

Third Edition,

WITH GREAT ADDITIONS,

INCLUDING

DIRECTIONS FOR THE SOLICITOR IN ALL MATTERS CONNECTED WITH EACH ASSURANCE.

BY CHARLES BARTON,

OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW, AUTHOR OF THE ELEMENTS OF CONVEYANCING.

Validiora sunt exempla quam verba, et plenius opere docetur quàm voce.

VOL. II.

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MODERN PRECEDENTS

IN

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CONVEYANCES AND ASSURANCES TO PURCHASERS.

No. XXXI.

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With Variations *where it is the Estate of the* Wife (1).

Where she is intitled as a feme sole *under a Will or Settlement* (2).

Where the Conveyance is made to Uses to bar Dower.

Where there is an Outstanding Term, to be assigned, or surrendered by the Purchase Deed (3).

And other Variations as below (4).

PURCHASES.

Vendor and Wife.

THIS INDENTURE of two parts, made the day of , in the year of the reign,

(1) In addition to the variations here subjoined, where it is the wife's estate, see *post*, No. XXXI. (A), p. 46; rider (D), p. 42.

Feme sole.

(2) See this variation, rider (D), p. 42, at the end of the precedent.

Variations.

(3) For the assignment or surrender of such terms, see Vol. I. No. XXVII. p. 401, 418, 424—see also *ibid.* p. 430, and *post*, rider (B), p. 34.

Outstanding term.

(4) To prevent the inconvenience which would be occasioned to the practitioner, by referring him perpetually to some other volume of the work than that before him, such of the variations,

Other variations.

PURCHASES.

Vendor and Wife.

Recital of contract for purchase.

&c. and in the year of our Lord , BETWEEN (*the vendor*) of, &c. and his wife, of the one part, and (*the purchaser*) of, &c. of the other part (1). WHEREAS, (2), &c. AND WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) (3), for the absolute purchase of

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&c. introduced in the preceding volume, as are likely to be frequently wanted, are here re-inserted.

Uses to bar dower.

(1) If the estate is intended to be limited to uses to bar dower, make the husband and wife of the first part, the purchaser of the second part,

"And A. B. of &c. a trustee named and appointed for the purposes hereinafter expressed, of the third part."

Outstanding term.

If an outstanding term is intended to be surrendered, make the termor of the second part, and the purchaser of the third part.

If it is to be assigned to attend, make the purchaser of the second part, the termor of the third part, and the new trustee of the fourth part, and see *ante*, Vol. I. No. XXVII. p. 401.

Deeds delivered to largest purchaser at a sale by auction.

It sometimes happens, under conditions of sale by auction, that the purchaser of a smaller lot is entitled to a covenant from the purchaser of the largest lot, for the production of title deeds delivered to him, in which case, if the covenant be not entered into by a separate instrument, make such largest purchaser a party of the last part.

Sub-purchase.

If the contract were entered into in writing by a friend or agent of the real purchaser, or the purchaser buy of a person who had previously bought but not taken a conveyance, make such agent or prior purchaser a party of the second part, and the purchaser of the third part.

Recitals.

(2) As to where a recital of the vendor's title is proper, see Vol. I. No. XVI. p. 162, n. (3), also 4 Elem. Conv. 2d Ed. p. 107, and for forms of recitals of different kinds of deeds, &c. see INDEX *voc.* RECITALS.

Sale by auction, &c.

(3) If the estate was sold by public auction, make the recital of the contract conformably to Vol. I. No. XVI. p. 163, n. (4).

PURCHASES.

Vendor and Wife.

the said messuages, lands, and hereditaments, free from incumbrances (other than as hereinafter is mentioned) at the sum of £ and hath requested that the same may be conveyed and assured to him in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, (1), that in pursuance and execution of the said contract, and in consideration of the sum of £ (2), of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*vendor*) (3) in hand well and truly paid, by the

Witness, in consideration of the purchase money.

If the contract for sale was by agreement in writing, see *ib.* 161 notes, 164, n. (5). Prior agreement.

If the sale was before a master in chancery, or deputy-remembrancer, see Vol. I. p. 188, (A). By order of court.

(1) Of the witnessing part of a deed see the notes annexed to Vol. I. No. XV. p. 123, *et seq.*—also 4 Elem. Conv. 2d Ed. p. 98. Witness.

(2) If the consideration be of any other kind than money paid down at the time of the execution of the conveyance, see Vol. I. No. XVI. p. 167, *et seq.* in notes. Consideration.

If part of the purchase or consideration money has been previously paid, say, Part of consideration previously paid.

"For and in consideration of the sum of £ heretofore paid by the said (*purchaser*) by way of deposit, and in part of the said purchase money or sum of £ , and of the further sum of £ of lawful money of that part of the united kingdom of Great Britain and Ireland called England, being the residue and in full of the said purchase money, by him in hand well and truly paid to the said (*vendor*), at or immediately before the sealing and delivery of these presents, (the payment of which two several sums of £ and £ making together the sum of £ , and that the same is in full for the absolute purchase," &c. *as above.*

(3) If the estate be the wife's, the purchase money may be Wife's estate.

PURCHASES.

Vendor and Wife.

said (*purchaser*) at or immediately before the sealing and delivery of these presents (1), the re-

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stated to be paid to both of them, and the receipt and discharge correspond, but this is not material.

Sale by public auction.

(1) This recital corresponds with the supposition, that the estate was sold by private contract; but if it were sold by public auction, say,

"AND WHEREAS, the said messuages, lands, and hereditaments, were put up to sale by public auction, on the day of last past, at which sale the said (*purchaser*) became, and was declared to be the highest bidder for, and the purchaser of the same (being lot No. in the printed particulars of sale thereof), at the sum of £ , and thereupon paid into the hands of the auctioneer the sum of £ , by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. And WHEREAS, the said (*purchaser*) is now desirous of completing his said purchase, and of having the said lands and hereditaments conveyed to him, in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and completion of the said purchase, and in consideration of the sum of £ , so paid by the said (*purchaser*), into the hands of the auctioneer, at the time of the said sale, by way of deposit and in part of the said purchase money as aforesaid, and of the further sum of £ of lawful money of that part of the united kingdom of Great Britain and Ireland, called England, being the residue and in full of the said purchase money, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the payment of which said sum of £ by way of deposit, and the receipt of which said sum of £ , being the residue of the said purchase money, making together the sum of £ , and being in full for the absolute purchase," &c. *as above.*

PURCHASES.

Vendor and Wife.

ceipt whereof, [and (1) that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession of the messuages, lands, and hereditaments hereinafter described], the said (*vendor*) doth hereby expressly acknowledge, [and of and from the same, and every part thereof, doth fully and absolutely acquit, release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said messuages, lands, and hereditaments, by these presents]. They the said (*vendor*) and his wife, (2), HAVE, and each (*w*)

(*w*) The vendor grants and releases the land, &c.

If the sale was by order of the Court of Chancery or Exchequer, see Vol. I. p. 188, (A). Order of court.

If part of the consideration money is to be retained by the purchaser, see *ib.* p. 165, n. (7), 170 in notes. Purchase money retained.

(1) Whatever is inserted within brackets may be omitted where brevity is particularly desired, (as not being essential to the efficacy of the deed); but any attempt at more than ordinary brevity, unless by a very skilful draftsman, is not to be recommended, and see *ante*, Vol. I. p. 160, n. (1). Conciseness.

(2) As a married woman cannot pass any estate by common law conveyance, but only by fine, there appears to be some degree of technical impropriety in making her join with her husband in the granting words of the deed; but as this form has universally prevailed, and is perfectly harmless, I have retained it. Wife granting.

If the purchase be made by an agent on the part of the purchaser, or the purchaser buy of a person who had previously bought but not taken a conveyance, add, Sub-purchase.

"With the privity and at and by the request and direction of the said (*agent*) or (*former purchaser*), testified by his being a party to and sealing and delivering these presents, HATH bargained, sold, aliened, and released, and by these presents DOTH bargain, sell, alien, and release, and the said

PURCHASES. *Vendor and Wife.*

of them HATH granted, bargained, sold, aliened, and released, and by these presents Do, and each of them DOTH grant, bargain, sell, alien, release, and confirm (1) unto the said (*purchaser*) and his heirs, ALL, &c. (2) or howsoever otherwise the said

---

(*agent or former purchaser*) HATH bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH bargain, sell, alien, release, ratify, and confirm unto the said (*purchaser*)," &c. *as above.*

Uses to bar dower.

When the estate is limited to uses to bar dower, through the medium of a trustee, it is usual to add,

"And also for and in consideration of the further sum of 5*s.* of like lawful and current money to the said (*vendor*) at the same time paid by the said (*trustee*), the receipt whereof is also hereby acknowledged."

But this is unnecessary.

Term to merge, short form.

(1) If the term is intended to be merged, it may be surrendered by a separate witnessing part at the end of the deed, as *post* rider B, p. 37; but if it be wished that the deed should be as short as possible, add,

"And the said (*termor*) with and by the privity and direction of the said (*vendor*), testified by his signing and sealing these presents, HATH bargained, sold, assigned, surrendered, and yielded up, and by these presents doth bargain, sell, assign, surrender, and yield up unto," &c. *as above.*

Which mode will have the same effect as the other for merging the term, and see Vol. I. p. 401.

Parcels.

(2) Care should be taken to describe the parcels accurately, and the names of the inclosures and the quantities they contain should in general be inserted, as,

"All that messuage or tenement situated in the township or parish of, &c. in the said county of, &c. with the barns, &c. to the same adjoining and belonging, and now in the occupation of, &c. as tenant thereof to or under the said (*vendor*),

messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other the messuages, lands, tenements, and hereditaments, (if any) comprised in the indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses (1), out-houses, buildings, barns,

PURCHASES.

Vendor and Wife.

General appurtenances.

---

or as the case may be. And also all those several closes and parcels of ground situate in the said parish of, &c. to the said messuage, &c. belonging, or therewith occupied or enjoyed, and commonly called or known by the several names, and containing by estimation the respective quantities hereinafter mentioned, (that is to say) East Field, containing, &c. &c. &c. all which said several closes or parcels of ground are now also in the occupation of the said as tenant to or under the said together with all and singular houses, &c. &c."

If the boundaries can be added, it is advisable to insert them, making use of the names of the owners of the adjoining lands, rather than the occupiers, but the names of both may be useful; and if any inclosure has been divided into two or more, it should be noticed. Too little attention is in general paid to the description of the parcels, and antiquated descriptions, wholly inapplicable to the estate at the time of the conveyance, are frequently continued, when a new description ought to be introduced; but if the parties will not agree to convey by an entire new description, from an apprehension that they may pass too much, it may be qualified and restrained by some such words as the following:

"All which said premises were formerly known and conveyed by the following description," (i. e.) then insert the ancient description.

(1) Adapt the general words to the different kinds of property—and see Vol. I. No. XV. p. 163, n. (20), and INDEX *voce* GENERAL WORDS.

General words.

PURCHASES.

Vendor and Wife.

stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, lands covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other] rights, privileges, easements, appendants and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed,]

Reference to the bargain and sale for a year.

except, &c. (1) (ALL which said messuages, lands, tenements, and hereditaments, are now in the possession of, or legally vested in, the said *(purchaser)* by virtue of a bargain and sale for a year to him thereof made by the said (*vendor*) and

(*w*)

his wife, for five shillings consideration, by an indenture bearing date on the day next before the day of the date of these presents (2), and by the

---

Lots.

If the premises were sold with others in lots, an addition to the following description of them is often made,

"Being the messuages, &c. described or distinguished as lot No. in the printed particulars of sale hereinbefore referred to or mentioned."

But this is not material.

Exceptions.

(1) Insert here any exception of a right of way, or the like, which there may be; as to exceptions in deeds, see 4 Elem. Conv. 2d ed. 108.

Lease for year.

(2) See the form of this bargain and sale, Vol. I. No. XVI, p. 110. and No. XIV. p. 117.

PURCHASES.

Vendor and Wife.

force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders of and in the said hereditaments and premises; and the rents, issues, and proceeds thereof, to arise or become payable from the day of now last past. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of them the said (*vendor*) and his wife, (w) respectively, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, and writings and evidences whatsoever, in anywise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are, or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs, executors, or administrators (1), or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies (duly stamped) when and as the said (*purchaser*) his heirs or assigns, shall require the same, of all

Grant of title deeds.

And copies.

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(1) If the estate be the wife's, say

Wife's estate.

"Of the said (*vendor*) and his wife, or either of them, or his heirs, or any other person or persons from whom they, or any or either of them can," &c.

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other deeds, muniments, and writings (1), (not being on record,) so in his, their, or any of their custody or power, or which can or may be procured as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, together with other hereditaments or property of equal or greater value; such copies, when first required, to be made and delivered at the expense of the said (*vendor*) (2) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same,] To HAVE AND TO HOLD (3) the messuages, lands, tenements, hereditaments, and all and singular other the premises, hereinbefore, and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, " unto the said (*purchaser*) and his heirs, to and for the use and behoof of him the said (*purchaser*) his heirs and

To HOLD to the purchaser in fee-simple.

Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

" Whether mentioned in the schedule here underwritten, or hereunto annexed or not."

Wife's estate.

(2) If the estate be the wife's, say,

" Of the said (*vendor*) and his wife, or one of them, their, his, or her heirs, executors, or administrators."

Habendum.

(3) Of the habendum in a deed, see Vol. I. No. XVI. p. 136; also 4 Elem. Conv. 2d Ed. p. 112.

assigns, for ever(1)." And (2) for the more effectually and satisfactorily conveying and assuring the aforesaid hereditaments and premises unto the

(w)

Uses to bar dower.

(1) If the premises are intended to be conveyed to uses to prevent dower, add the limitation, *post*, p. 31, instead of the words within inverted commas.

Covenant to levy fines by husband.

(2) It has from a very early period been held, that if a husband covenant that his wife shall levy a fine or make a surrender of his lands to preclude herself of dower, he may be decreed in equity to procure her consent, see Berry *v.* Wade, Finch. 180. Griffin *v.* Taylor, ib. 106. And this doctrine has since been frequently corroborated, see Barrington *v.* Horne, 5 Vin. Ab. 547. pl. 45. 2 Eq. Ca. Ab. 17. pl. 7. Hall *v.* Hardy, 3 P. Wms. 187. Sedgwick *v.* Hargrave, 2 Ves. 57. Morrison *v.* Stephenson, 7 *ib.* 475, and where the husband has died before this has been done, the court has considered her conscience bound, and held her to a specific performance, on the presumption that her voluntary consent had been previously obtained, Baker *v.* Child, 2 Vern. 61. This doctrine seems, however, totally to defeat those benevolent provisions of the common law in favour of the wife, which vacate all conveyances made by her of her interest, during coverture, lest they should have been occasioned by an undue influence on the part of her husband, and it was accordingly disapproved by Eld. Ch. in the late case of Emery *v.* Wase, 5 Ves. 846. 8 ib. 505. who observed the policy of the law to be, "that the wife is not to part with her property but by her own spontaneous and free will;" and his Lordship proceeded to declare, that "if the matter were *res integra*, he should hesitate long before he should admit of the presumption that her consent had been previously obtained in preference to the principle of the policy of the law; for," he added, "if a man chooses to contract for the sale of the estate of a married woman, or an estate subject to dower, he knows the property to be hers either wholly or to a certain extent, and is therefore bound to regard the policy of the law; what right then has he to complain if she refuse to concur? and why is he not to take his chance of damages against the husband?" and concluded in expressing his doubts whether it would not be proper to have the judgment of the House of Lords upon the point, and see accordingly Gilb. Lex. Prat. 245. Otread *v.* Round, 4 Vin. Ab. 203. Ca. 4. 2 Eq. Ca. Ab.

PURCHASES. said *(purchaser)* and his heirs, "and for barring and extinguishing all estate, right, and title to dower of the said the wife of the said (*vendor*)(1)" and all other estates, rights, and titles

Vendor and Wife.

145. Morris *v.* Stephenson, 7 Ves. 478. Hence it seems now to be prudent in every case to have the wife's acknowledgment taken before the contract with the husband be completed, lest on the death of the husband, where the estate is his, or of the wife, where it is hers, she, or her heir, should refuse to concur. And as the vendor is to deduce a clear title in himself at his own expense, and the expense of the purchase deed, taking such clear title from the vendor, is borne by the purchaser, and is lengthened by the covenant for levying the fine, it should seem that he might in all cases require the acknowledgment to be first taken. When this has been done, recite,

Fine already acknowledged.

"And WHEREAS for the more, &c. *as in the text*, it was agreed on the contract for the said purchase, that previously to the execution of the conveyance of the said hereditaments a fine should be levied thereof by the said (*vendor*) and ( ) his wife to the use of the said (*purchaser*) and his heirs, And whereas in pursuance of the said agreement a fine *sur cognizance de droit come ceo*, &c. has been acknowledged, as of term now last past, and the same is intended to be forthwith perfected with all due despatch, and proclamations to be thereupon had, according to the form of the statute in such case made and provided. Now it is hereby declared, &c. *proceed as in the text*, p. 17, *marg.* *.

But when this precaution is considered to be unnecessary, add the covenant to levy a fine, *as in the text.*

Wife's estate barrable only by fine or recovery.

(1) If the estate be the wife's, omit the words within inverted commas.

As a wife during the lifetime of her husband has not any vested estate or interest in the land, but merely a title to dower, it cannot be made the subject of a conveyance, and can only be barred or stopped from growing into a right on her husband's death by fine or recovery, except of lands within the city of London, which may be exonerated from the wife's claim by bargain and sale enrolled in the court of Hustings.

whatsoever, of, in, to, or out of the said hereditaments and premises, he the said (*vendor*) for himself, his heirs(1), executors, and administrators(2), PURCHASES. *Vendor and Wife.*

And where a wife is not expressly barred of her dower by settlement made previous to her marriage, or by the mode in which the husband took the estate, a fine can seldom be dispensed with. For although an outstanding legal term created previously to the marriage, or time of the inheritance vesting in the husband, and assigned to a trustee to attend the inheritance of the purchaser, is sometimes relied upon—see Maundrell *v.* Maundrell, 7 Ves. jun. 567. 10 ib. 246. and will often be an effectual bar, Wynn *v.* Williams, 5 Ves. jun. 180.; yet as the term will not prevent her recovering her dower at law, with a *cesset executio* during the term, which would make the purchaser liable to costs at law (although otherwise it is presumed in equity) a fine is a more efficacious remedy, and in practice is generally required. Fine generally necessary.

(1) The person covenanting to levy a fine should always covenant for his heirs, who, unless expressly named, will not in this any more than in other cases be bound. Covenant to be with heirs.

This covenant to levy a fine should be entered into with some person who is at the time, or who will upon the execution of the deed be possessed of the seisin of the lands, &c. of which the fine is levied, in order that it may be annexed to the land, and give the benefit of it to future proprietors, to whom the estate may be conveyed before the fine is perfected. Covenant should be with person having the seisin.

(2) The above form, it will be perceived, differs a little from that which is found in the printed forms of precedents (and ordinary drafts), which usually make the husband covenant "for himself and the said ( ) his wife," as if the intent were to bind her, by the covenant of her husband, to do the act required, whilst the intent and legal effect of the covenant is to bind himself only and his heirs for her performance, and to make him and them answerable in damages should she refuse. The old form is therefore improper, as expressing in terms what in law cannot be enforced, namely, the obligation on the part of the wife to perform the covenants entered into on her behalf by her husband. This inaccuracy is noticed by Mr. Preston, who ex- Husband covenants for wife.

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(*w*) Conveyance to levy fine.

doth hereby covenant and declare with and to the said *(purchaser)* his heirs and assigns, and she the said (wife) doth hereby consent and agree (1), that they the said (*vendor*) and his wife (2) shall and will, at the proper expense and costs of the said (*vendor*) his executors or administrators (3) as of term now last past (4), [and in default thereof, then in or as of any subsequent term, when thereunto required by the said *(purchaser)* his heirs or assigns] well and duly acknowledge and levy, or cause to be so acknowledged

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presses a "surprise that so palpable an inaccuracy should so long have escaped correction." 2 Prest. Conv. p. 83.

Wife's assent. (1) When the wife is interested, it is usual to express her consent to the husband's covenant that she shall levy a fine, in order, as it is said, to create an equity against the wife, but quære this; and see Emery *v.* Ware, 5 Ves. 846. 8 ib. 505.

Wife's estate. (2) If it be the wife's estate, say "or her heirs."

Expense of fine. (3) Where the purpose of the fine is to bar the dower of the wife of the vendor, or discharge the estate from any incumbrance, it must be levied at the expense of the vendor; but where it is levied simply at the instigation of the purchaser, as a cautionary security against suppository defects, of a nature which it is not obligatory on the part of the purchaser to remove, it must be at the purchaser's own expense. As doubts may however in some cases arise as to whether the title actually requires a fine or not, it is always right to express at whose expense the parties have agreed that it shall be levied.

Fine acknowledged. (4) As the death of the parties before the return of the writ of covenant will vacate the proceedings on the fine, and as the writ may be sued out in the vacation returnable as of the preceding term, this is usually done, and the fine acknowledged, before the suing out of the writ, in which case the fine will be good, notwithstanding the death of the person levying it before it is completed.—And see *post*, No. XXXI. (A), p. 46.

and levied unto the said *(purchaser)* and his heirs, before one or more justice or justices (1) of his majesty's court of Common Pleas at Westminster (2), one or more (3) fine or fines, *sur conusance*

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(1) A fine may be levied by the chief justice, or either of the puisne judges of the court of C. B., or a sergeant at law, by dedimus, but by no other commissioners if a judge be in town; and where levied by a judge or sergeant, the dedimus may issue after the acknowledgment, but if by any other commissioners it must issue before the acknowledgment, Nokes *v.* Styles, 3 Taunt. 49.

Fine may be levied by any judge, &c. of C. B.

(2) All the courts of common law have, for the purpose of levying fines, jurisdiction over every part of the kingdom, except Ireland, Wales, the counties palatine of Durham, Lancaster and Chester, and lands in ancient demesne. But as the court of Common Pleas is the only court in which original pleas concerning the right of freehold in real actions can be entertained, 3 Black. Com. 40. a fine levied in either of the other courts at Westminster, or elsewhere, unless by special custom or act of parliament, would be at least voidable, if not absolutely void, see Co. Read. 9. and vid. *post*, No. XXXI. (A), p. 46.

Fine to be levied in Common Pleas.

And even acts of parliament erecting a special jurisdiction to levy fines do not take away the general jurisdiction which the courts of Westminster before had, but only give to the particular place a concurrent jurisdiction with those courts, see Hard. 116. 130. Kindston *v.* Millar, 2 Dick. 773. Warden of St. Paul's *v.* Cricket, 2 Ves. jun. 563. Ditto *v.* Morris, 9 Ves. 155. Antrobus *v.* East India Company, 13 ib. 169.

If the lands lie within the precincts of a county palatine, or within the principality of Wales, say

Lands in Wales or palatinate.

"Shall and will, &c. at the next great or general court of great sessions or assizes, to be holden in or for the said

(3) If the lands be situated in different counties, several writs of covenant must be brought against the cognizee as in other real actions, although they may all be comprised in the same fine, see 2 Inst. 512. Dyer, 227.

Lands in different counties.

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de droit come ceo (1), &c. with proclamations (2) to be thereupon made, [according to the form of

county of , before his Majesty's justice or justices of the same sessions, or other person or persons lawfully authorised in that behalf, acknowledge, &c." *as in the text.*

Durham, Lancaster, &c.

If the premises be within any city or town authorised to take acknowledgment of fines, say

" Shall and will, &c. at the next court of our lord the king, to be holden in or for the said city or town of at the common hall or court of pleas there, acknowledge and levy, in due form of law, according to the custom of the same city, before the mayor of the said city or town, or other person or persons," &c.

Ancient demeane.

If the lands be holden in *ancient demesne*, say

" Shall and will, &c. on or before the day of . next ensuing the date of these presents, or as soon thereafter as may be, acknowledge and levy in the court of the lord or lords of the said manor of or other manor whereof the said messuages, &c. or any of them, are holden in ancient demesne, according to the custom of the same manor, one or more fine or fines in the nature of a fine or fines *sur conusance de droit come ceo*, &c. at common law, unto the said (*purchaser*) and his heirs," &c.

But it is to be observed, that as neither the statute *de modo levandi fines* (18 Ed. 1. st. 4.) nor the statute of nonclaim, 4 Hen. 7. c. 21. extends to courts in ancient demesne, Hunt v. Bourne, 1 Salk. 340. Com. 93. 124. or other customary courts; fines levied in such courts will not (unless, perhaps, by special custom) operate as a bar of entails, or by nonclaim—see Cru. on Fines, 175, 192.

Præcipe, &c.

(1) See the form of the *præcipe* and concord of this fine, *post*, No. XXXI. (A), p. 46.

Proclamations.

(2) It is not necessary that proclamations should be had upon a fine levied for the sole purpose of passing the wife's estate or interest, whether it be of her inheritance or a title to dower only; but as proclamations are necessary to give it effect under the

the statute in such case provided, or such other fine or fines, and in such other manner and form as the circumstances of the case may require], of all and singular the messuages, lands, tenements, and hereditaments hereinbefore granted and released, or intended so to be, [by the name and description of, &c. (1) or such other names and descriptions respectively, as shall be sufficient and proper effectually to comprise and pass the same, and as the counsel in the law of the said (*purchaser*), his heirs or assigns, shall advise for that purpose]. AND (2) it is hereby declared and

PURCHASES: *Vendor and Wife.*

Declaration of the uses of the fine.

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statute of non-claim (4 Hen. VII.) or to bar an entail, it is usual to have every fine levied with proclamations, in order that those purposes may be obtained.

(1) Although in describing the parcels in deeds where there is a declaration of the uses of a fine, no particular precaution is necessary beyond what is sufficient to comprehend all and no more, than the premises of which the fine is intended to be levied, which may be done, either by setting them out in full, or referring to them as described in a preceding or subsequent part of the deed in the usual way of describing or referring to them in purchase deeds. Yet, as it has been determined that the premises will pass by any denomination which the parties affix to them, a consolidated description of them similar to that in the fine itself, as of two messuages, twenty acres of land, &c. is added by some practitioners, with a view of their more certainly passing in case of any omission in the detailed description, and to avoid the necessity of applying to the court to amend the fine, in case of any such omission; this mode is not, however, generally adopted. Parcels.

(2) This part of the deed, declaring the uses of the fine, should be so framed as to be the words of all parties who are beneficially interested in the premises. For if any party interested omit to concur in the declaration of uses, the use as to the interest of such Uses of fine.

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*

agreed, by and between all and every the parties hereto, according to their respective estates and interests, and they do hereby respectively direct that the fine or fines [so as aforesaid, or in any other manner, or at any other time or times, to be acknowledged and levied, of the said messuages, lands, tenements, and hereditaments, or of any part thereof, and also all other fines, conveyances, and assurances in the law whatsoever, at any time or times heretofore, [or to be at any time or times hereafter] (1), made, acknowledged, levied or executed, of the same hereditaments and premises, or any part thereof, either alone or

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party will result back to him, and this use, in the case of a fine, will be as of his former estate, even though he be tenant in tail, and not as of an estate in fee-simple, as it would in case of a common recovery.

Uses of future fines.

(1) The declaration of the uses of the fine is generally made to extend to all preceding and subsequent fines which have been or may be levied by the same parties, which is done with a view of enabling all such fines to give effect to the present object of the parties, and this, so far as regards fines which may have been previously levied, and of which no other effective uses have been declared, may be well enough; but when applied to subsequent fines, it appears to be going too far, and may control and confine the uses of future fines to those here declared, contrary to the intention of the parties, should any such future declaration of uses happen to be in any respect defective: if, however, the declaration of uses be made thus extensive, care should be taken expressly to confine it to the premises comprised in, and the parties interested under the present deed, and should, I conceive, as to future fines, have a qualification subjoined to the effect of "so far as the uses of any fine or fines hereafter to be levied shall not be otherwise lawfully declared or intended to be declared of or concerning the premises therein to be comprised."

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together with other hereditaments or property, by or between the parties to these presents, or any or either of them, or whereunto they or any or either of them, are or is, or have or has been, or shall or may be parties or privies, or party or privy, shall be and enure, [and shall at all times, and from time to time be construed, deemed, and taken to be and enure, and the same is and are, and was and were meant and intended to be and enure, and the person or persons to whom the said fine or fines and other assurances respectively have or hath been or shall or may be levied, made, or executed, shall] as to all and singular the messuages, lands, tenements and hereditaments, by these presents granted and released, or otherwise assured or intended so to be, stand and be seised thereof (save only so far as may otherwise be lawfully declared of the same), "to the use and behoof of the said (*purchaser*), his heirs and assigns for ever (1)," absolutely freed, discharged, and exonerated of and from all "estate,

(w)

(1) If the conveyance be made to uses to bar dower, instead of the words within apostrophes, add,

Uses to bar dower.

"To the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same."

An observation may here be made to guard the young practitioner against what is termed an use upon an use, i. e. an use arising out of an use, or an use declared after the declaration of a prior use. For which purpose care must be taken that a mere seisin only be vested in the cognisee of the fine, in order that the uses declared may vest in the *cestui que* use, by virtue of the statute of uses. The declaration must not be, therefore,

Use on use.

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right, and title of or to dower [as well equitable as legal], which the said , the wife of the said (*vendor*) now hath, or heretofore had, or hereafter shall or may have or rightfully claim, or might have had or rightfully claimed, if these presents had not been made, in, out of, or respecting the said hereditaments and premises or any part or parcel thereof, and also of and from all other (1) estates, rights, titles, charges, and incumbrances whatsoever, which do, can, or may in any wise affect the same, or any part thereof" (2). AND the said (*vendor*), for himself, his heirs, executors, and administrators, doth

Covenant by vendor that he is seised in fee.

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as it frequently is when prepared by an unskilful draftsman, that the fine shall enure to the use of the cognisee, and his heirs, to and for the uses, ends, and purposes afterwards expressed, but the declaration should be that the fine shall enure simply to the cognisee and his heirs, omitting the use till you come to speak of the estate intended to be limited; for otherwise those estates will be equitable interests only, and the legal interest remain vested in the cognisee of the fine.

Other estates, &c.

(1) As a fine expressed to be levied solely for the purpose of extinguishing the wife's title to dower might be construed to have no more extensive operation, it seems to be right to declare the intention of the parties, that it shall bar all other outstanding titles, &c. in which case it will have the full effect of a fine under the statutes of non-claim, &c.

Wife's estate.

(2) If the estate be the inheritance of the wife, omit the words within inverted commas, and say, "freed and discharged of and from," &c. *as above.*

Sub-purchase.

If the original purchaser has agreed for the sale of his interest in the premises to a third person before any conveyance executed to him, and the conveyance is now made by the vendor to such third person, add here a covenant by the original purchaser

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hereby covenant and declare, with and to the said (*purchaser*), his heirs (1) and assigns, in the manner following (that is to say) (2), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered, by

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that he has not incumbered; the form of this covenant may be as follows,

"And the said (*original purchaser*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*present purchaser*), his heirs and assigns in the manner following, that is to say, that he the said (*original purchaser*) hath not at any time heretofore made, done, committed, executed, or knowingly occasioned, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatever, whereby or by reason or means whereof the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or intended so to be, or any part thereof, or any estate or interest therein, is or are, or can or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever, or whereby the said (*original purchaser*) is or may be prevented from conveying and assuring the said hereditaments and premises unto the said (*present purchaser*) and his heirs in the manner aforesaid, and according to the true intent and meaning of these presents."

(1) If the estate is to be conveyed to uses to bar dower, it is usual (but not material) to add the word *appointees*, as,

"With and to the said (*purchaser*), his heirs, appointees, and assigns," throughout the covenant, "and also with and to the said (*trustee*), his executors, administrators, and assigns."

Uses to bar dower.

(2) Of covenants for the title, see Vol. I. No. XV. p. 138, notes; and 4 Elem. Conv. 2d Ed. p. 123.

Covenants for title.

PURCHASES. him the said (*vendor*), and his wife, or either of them (1), to the contrary, he the said (*vendor*), at the time of the sealing and delivery of these presents, is lawfully and rightfully seised in his demesne as of fee, in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted, released, or otherwise assured as aforesaid, or intended so to be, as of or for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession and in severalty, without the said estate or premises being subject or liable to any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever (2), the title to dower

Vendor and Wife.

(*w*)

Vendor taking by devise. (1) If the vendor become entitled to the premises by devise or voluntary conveyance (i. e.), without having paid a valuable consideration, see Vol. I. No. XV. p. 141, n. (39), and add,

"Or the said (*devisor*) deceased," *or other the last purchaser of the premises.*

If by descent. If he became entitled by descent, add,

"Or any of the ancestors of him the said (*vendor*)." *Or* if it be the wife's estate, "of her the said his wife, they the said (*vendor*) and his wife, are, or one of them is seised of or well entitled to all, &c." *as above.*

Subsisting leases. (2) If the premises or any part of them be on lease, add,

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of the said the wife of the said (*vendor*) and intended to be barred by the fine hereinbefore agreed to be levied only excepted. AND also that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*vendor*) and , his wife, now have in themselves full power, and lawful and absolute right, title, and authority, by these presents and by the fine so levied, or agreed to be levied as aforesaid, to grant, bargain, sell, release, and assure all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, "unto and to the use and behoof of the said (*purchaser*), his heirs and assigns, in the manner and form hereinbefore expressed concerning the same (1)." AND

(*w*) And has right to convey.

That the purchaser shall quietly enjoy.

"Leases or agreements for leases of which the said (*vendor*) hath legal notice only excepted."

Or,

"A certain indenture of lease, of the said premises (*or* a part of the said premises), bearing date the day of for the term of years, from the day of , at the yearly rent of £ , [and the land and sewers taxes chargeable upon the said premises] (*if so*), only excepted."

(1) If the conveyance be to uses for preventing dower, instead of the words included within inverted commas, say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to, upon, and for the uses, trusts, intents, and purposes aforesaid, and according to the true intent and meaning of these presents. AND FURTHER that all and singular the said hereditaments and premises, with the appurtenances, shall and may be, and remain, and be holden and enjoyed, to, for, and upon the same uses, trusts, intents, and purposes, and the rents, issues, and profits thereof be received, taken, and applied accordingly."

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further, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the hereditaments and premises, hereinbefore granted and released or otherwise assured or intended so to be, with their and every of their respective rights, members, appendants, and appurtenances; and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit (1), without any manner of hinderance, interruption, disturbance, claim, or demand whatsoever, of or by the said (*vendor*) and (*w*) , his wife, or either of them, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for them or either of them (2). AND that free and clear, [and

Free from incumbrances.

Outstanding term assigned.

(1) If an outstanding term is intended to be assigned by the same deed, add here,

"And also for the said (*trustee*), his executors, administrators, and assigns, to have, hold, possess, and enjoy the same premises for the residue now to come of the said term of years, hereinafter to him assigned, as hereinafter mentioned, upon, and for the trusts, intents, and purposes hereinafter expressed concerning the same, without any, &c." *as above.*

Vendor took by devise.

(2) If the vendor took by devise or voluntary conveyance, add,

"Or the said (*devisor*) deceased, or other the last purchaser."

clearly and absolutely discharged and exonerated], or otherwise by and at the expense of the said (*vendor*), his heirs, executors, or administrators (1), effectually protected, and indemnified from, and against all former and other, [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, releases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, and in particular of and from all right, title, and claim of the present or any future wife of the said (*vendor*) (2), re-

PURCHASES.

Vendor and Wife.

If the vendor took by descent, add,

By descent.

" Or any of the ancestors of the said (*vendor*)."

If the premises be on lease, add,

Leases.

" Other than persons rightfully claiming under or by virtue of such leases, and agreements for leases as aforesaid, so far as respects their respective estates or interests, under or by virtue of the same."

Or more shortly,

" Other than lessees in respect of their leases."

Or,

" Other than any person or persons claiming or to claim under or by virtue of the indenture of lease hereinbefore referred to."

(1) If it be the wife's estate, add,

Wife's estate.

" Or of the said (*wife*), her heirs, executors, or administrators."

(2) " A man may reasonably take a covenant against the wife's right of dower, although he has other security to rely upon for protection; for such covenant will afford him a remedy in respect of damages he may sustain by any suit which may be instituted by her for dower." Lord Hardwicke in Hill v. Adams, 2 Atk. 208.

Dower.

PURCHASES.

Vendor and Wife.

mainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, liens and incumbrances whatsoever, which at any time or times heretofore have been, or at any time or time hereafter shall or may be made, executed, occasioned, or suffered by the said (*w*) *(vendor)* and , his wife, or either of them (1), or any other person or persons "now or hereafter being or to be entitled to the said hereditaments and premises or any part thereof, or any estate, right, or interest therein, from, through, under, or in trust for them, or any or either of them, or by or through their, or any or either of their acts, or defaults" (2). AND moreover, that he the said (*vendor*) and his heirs, and the said

Covenant for further assurance. (*w*)

Vendor taking by devise. (1) If the vendor took by devise or voluntary conveyance, add,

"Or the said (*devisor*) deceased," *or other last purchaser.*

By descent. If by descent, add,

"Or any of the ancestors of the said (*vendor*)."

Leases. If the premises be on lease, add,

"Other than such leases and agreements for leases, and land or sewer's taxes as aforesaid."

Conciseness. (2) If conciseness be required, instead of the words within inverted commas, say,

"So entitled as lastly aforesaid."

his wife, and all and every other person or persons who now or at any time hereafter is or are or shall or may be entitled to any estate, right, or interest, in, to, or out of, the hereditaments and premises, hereby or by the fine so agreed to be levied as aforesaid, granted, and released, or otherwise assured or intended so to be, or any part thereof, from, through, under, or in trust for them or either of them (1), shall and will from time to time, and at all times hereafter, upon the request, and at the costs and expense of the said *(purchaser)*, his heirs or assigns, make, do, acknowledge, levy, suffer, execute and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected], with all proper despatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever,

PURCHASES.

Vendor and Wife.

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(1) If the vendor took by devise or voluntary conveyance, add, Vendor taking by devise, &c.

"Or the said (*devisor*) deceased," *or other last purchaser.*

If by descent, add, Descent.

"Or any of the ancestors of the said (*vendor*)."

If the premises be on lease, add, Leases.

"Other than persons rightfully claiming under or by virtue of such leases and agreements for leases as aforesaid, so far as may respect their estates or interests, under or by virtue of the same."

Or,

"Other than lessees in respect of their leases."

Or,

"The said *(lessee)* and his assigns, in respect of the said in part recited lease."

PURCHASES.

Vendor and Wife.

[whether by feoffment, fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled, or otherwise, feoffment, release, confirmation, limitation, or declaration, of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better, and more effectually, or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments, and premises, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every or any of their rights, members, appendants, and appurtenances unto (1), "and to and for the use and behoof of the said *(purchaser)*, his heirs and assigns," free from incumbrances as aforesaid (2), in such manner and form as he the said

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Uses to bar dower.

(1) If the conveyance be to uses to bar dower, omit the words within inverted commas, and say,

"Unto the said *(purchaser)* and his heirs, to the uses, for the ends and purposes, and in the manner hereinbefore declared or expressed concerning the same."

Defect of evidence of title.

(2) If there be any defect of evidence remaining unsupplied at the time of the purchase being completed, reference may be made to such defects by adding to this covenant,

"And also for obtaining any certificate or certificates, or other document or documents, or evidence or evidences whatsoever, which in or by the opinion in writing, under the hand of such counsel in the law of the said (*purchaser*), his heirs or assigns as aforesaid, shall be requisite for clearing up, elucidating, or removing any apparent obscurities, defects, or objections in or concerning the title of him the said (*vendor*) to the said hereditaments, or any part thereof."

PURCHASES.

Vendor and Wife.

(purchaser), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister,) shall require and advise, [and prepare and tender (if the nature thereof permit), for his or their signature and execution, so that such further assurance or assurances or any of them do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their respective acts, deeds, omissions, and defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively shall be and enure, unless therein otherwise declared or expressed, in corroboration and confirmation of these presents, and of the estate and interest hereby or mentioned or intended to be

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And if such be the case,

"And also for getting in and assigning unto the said (*purchaser*), his heirs and assigns, or to a trustee or trustees for him or them, a certain term of years (describing it), &c. *or* all or any outstanding terms, estates, and interests affecting the said hereditaments, or any part thereof."

PURCHASES. hereby granted and released, or otherwise assured (1)]. IN WITNESS, &c.

Vendor and Wife.

Term. (1) If an outstanding term is intended to be assigned by the same deed, see *ante*, p. 24, n. (1).

Deeds. If the title deeds be not delivered to the purchaser, add a covenant for the production of them, as *post*, rider (C), and see Vol. I. No. XVI. p. 196, or prepare a separate deed for that purpose in the form referred to, INDEX *voce* DEEDS.

Outstanding term. If there be an outstanding term which is intended to be surrendered; or to be assigned by the same deed, see *post*, rider (B), p. 34.

Provisoes, &c. For various provisions, &c. adapted to the particular circumstances of title or agreements of the parties, see No. XVI. (*ante*, p. 160), also the riders at the end of No. XXVI. (*ante*, p. 188, *et seq.*); and INDEX *voce* PROVISO.

Execution and receipt, &c. *** As to mode of execution, attestation, indorsement of receipt, &c. see No. XVI. p. 184, *et seq.* in notes; and 4 Elem. Conv. 2d ed. 85, 88, 91, 96.

Stamp. As to the stamp, see INTRODUCTION, p. xcvi.

(A) Variation *where the Premises are to be limited to uses to prevent Dower, see ante, p.* 11.

Limitation to the purchaser and his trustee to prevent dower.

" To the uses, upon the trusts, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same (that is to say) (*or more concisely as below*) (1), to the use of such person and persons, for such estate and estates, interest and interests, [by way of legacy, annuity, rent charge (2), or otherwise, in such parts, upon such trusts], for such ends, intents, and purposes, [in such manner and form, and either absolutely or conditionally, and for any term or number of years, or for life or lives, and charged and chargeable with any sum or sums of money, either annually or in gross or otherwise, and subject to such powers of revocation and new appointment, and other powers, provisoes, conditions, restrictions, limitations, declarations, and agreements], as the said (*purchaser*) [either personally, and on his own part, or on the part or behalf or concurrently with, or at or by the request or direction of any purchaser, nominee, appointee, or releasee, under or in pursuance of these presents], at any time or times, and from time to time, by any deed or deeds, instrument or instruments in writing to be by him sealed, and delivered in the presence of and attested by two or more credible witnesses, [or by his last will and testament in writing, or any codicil or codicils thereto, to be respectively by him signed, sealed, and published in the presence of and attested by three or more credible

(1) See p. 32, marg. *.

(2) It has been doubted whether a rent-charge or the like out of an estate, could at law be limited under a general power to appoint " estates and interests" only. See Brown v. Taylor, Cro. Car. 38. Hence the power is in general made expressly to embrace that object. *Sed vid.* E. of Bath's case, 3 Ch. Ca. 55. Middleton v. Pryer, Amb. 393.

PURCHASES.

Vendor and Wife.

witnesses], shall direct, limit, or appoint [or give or devise] the same, and in default of, and until such [or some other sufficient] direction, limitation, or appointment, [gift, or devise], shall be made, and as to such part of the said hereditaments, and premises, and such estate and estates, interest and interests therein, of which no such direction, limitation, or appointment [gift or devise] shall be made, or take effect, [and when and as any estate or estates, interest or interests so directed, limited, appointed, [given or devised], shall determine], to the use of the said (*purchaser*) and his assigns, during the term of his natural life, without impeachment of waste, and with full power to commit waste, and from and after the determination of that estate, by any means, in his life time, to the use of the said (*trustee*), his executors, and administrators, during the natural life of the said (*purchaser*), in trust nevertheless for the said (*purchaser*) and his assigns, [and to permit and suffer him and them to receive and retain the rents, issues, and profits thereof during his natural life, for his and their own proper use and benefit], and to the intent that the present and every future wife of the said (*purchaser*) may be barred and precluded from all estate, right, and title of or to dower, in or out of the same premises, or any part thereof, and from and immediately after the determination of the estate hereby limited in use to the said (*trustee*), his executors and administrators, during the life of the said (*purchaser*), then to the use and behoof of the said (*purchaser*), his heirs and assigns for ever."

In cases where conciseness is peculiarly desirable, the limitation may be shortened, thus:

Shorter form of the above limitation.

"To the use of such person or persons, upon such trusts, for such estates and interests, intents and purposes, [and with and subject to such powers, declarations, and agreements, and so charged and chargeable], as the said (*purchaser*), or his nominees or appointees by any deed, or other instrument in writing, to be signed and sealed by him in the presence of and attested by two or more credible witnesses, or by his last will or testament, or any codicil thereto, to be respectively signed and sealed by him in the presence of, and

attested by three or more credible witnesses, shall direct or appoint, and in default or failure of any such direction or appointment [as to the whole or any part of the said premises, or any estate or interest therein, then as to such part thereof of which none shall be made or take effect] to the use of the said (*purchaser*) and his assigns, during the term of his natural life, [without impeachment of or for any manner of waste, and with full power to commit waste], and upon the determination of that estate in his life-time, to the use of the said (*trustee*), his executors and administrators, during the life of the said (*purchaser*), but in trust for the said (*purchaser*) and his assigns, [and to the end that the present and every future wife of the said (*purchaser*) may be barred of dower, out of the said premises], and upon the determination of the estate so limited to the said (*trustee*) as aforesaid, then to the use of the said (*purchaser*) his heirs and assigns for ever."

Or the limitation may be,

Short form.

"To hold to the said (*purchaser*) and his heirs, to the use of him the said (*purchaser*) and his assigns during the term of his natural life, without impeachment of or for any manner of waste, and after the determination of that estate by forfeiture, or otherwise, in his lifetime, to the use of the said (*trustee*), his executors, administrators, and assigns, during the life of the said (*purchaser*), in trust for him the said (*purchaser*) and his assigns, and to prevent any wife of the said (*purchaser*) from being entitled to her dower in or out of the said premises, and after the decease of him the said (*purchaser*) to the use of the heirs and assigns of the said (*purchaser*) for ever."

Other forms.

See various other forms of limitation to bar dower, Vol. I. No. XXVIII. p. 445.

Vendor and Wife.

(B) Variation *where an Outstanding Term is assigned or surrendered by the Deed conveying the Inheritance* (1).

Assignment of outstanding term.

AND WHEREAS, by indenture, bearing date the day of , which was in the year , and made or expressed to be made, BETWEEN, &c.

the messuages and hereditaments hereinbefore described, were demised unto for the term of years, thence next ensuing, for certain purposes therein expressed, AND which have now long since been fully performed, or otherwise satisfied. AND WHEREAS, by divers mesne assignments and other acts in the law, and particularly by an indenture bearing date the day of which was in the year , and made or expressed to be made between, &c.

of the one part, and the said (*termor*) of the other part, the said hereditaments were assigned unto, or otherwise became vested in the said (*termor*) for the then residue of the said term discharged thereof. AND WHEREAS the said (*purchaser*) is desirous that the said term may be assigned (2) to the said (*trustee*) in trust to attend the reversion and inheritance of the said premises as now vested in him as aforesaid. NOW THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said request, and in consideration of the sum of 10*s.* of lawful and current money of England, in hand well and truly paid to the said (*termor*)

Term.

(1) A more proper mode of assigning an outstanding term, however, is by a separate deed—see Vol. I. No. XXVII. p. 404, n. (1); for the form of which assignment see Wilde's Supplement, *voc.* ASSIGNMENT.

Term to merge.

(2) If the term be intended to be merged, say,

" Has requested, &c. that the residue now to come of the

PURCHASES.

Vendor and Wife.

by the said (*trustee*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged: He the said (*termor*) by the direction and appointment of the said (*vendor*), and at the nomination of the said (*purchaser*) testified by their severally being parties to and sealing and delivering these presents, [HATH bargained, sold, assigned, transferred, and set over, and by these presents] DOTH bargain, sell, assign, transfer, and set over; AND the said (*vendor*), in consideration of the purchase money so paid to him, as hereinbefore is mentioned [HATH bargained, sold, assigned, ratified, and confirmed, and by these presents] DOTH bargain, sell, assign, ratify, and confirm, unto the said (*trustee*), his executors, administrators, and assigns, ALL, &c. which said messuages, lands, tenements, hereditaments, and premises, are part and parcel of the messuages, lands, tenements, and hereditaments, which are hereinbefore expressed to be granted, released, and conveyed unto or for the said (*purchaser*) his heirs, "appointees," or assigns, by these presents, in the manner aforesaid; and also in and by (*or* part or parcel of the messuages, lands, tenements, and hereditaments, in and by) the said hereinbefore in part recited indenture of the day of demised to the said , and since assigned unto, or otherwise become vested in the said (*termor*) his executors, administrators, and assigns, for the residue of the said term as hereinbefore is mentioned. AND all the estate, right, title, interest, term and terms of years, yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said (*termor*) and (*vendor*) respectively, of, in, to, or respecting the same messuages, lands, tenements, hereditaments, and premises, and every or any part thereof [together with the said several hereinbefore in part recited indentures of demise, and assignment, and all benefit or advantage incident or belonging to the same or either of them, or to the covenants

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said term of years, in the said lands and hereditaments, may be merged in the reversion and inheritance thereof."

PURCHASES.

Vendor and Wife.

and agreements therein respectively contained]. To HAVE AND TO HOLD, the several messuages, lands, tenements, hereditaments, and premises, hereby assigned, or mentioned, or intended so to be, and every part and parcel thereof, with their respective appurtenances, unto the said (*trustee*) his executors, administrators, and assigns, from henceforth, for and during all the residue and remainder which is or may be now to come or unexpired of or in the said term of years, in and by the said hereinbefore in part recited indenture of the day of expressed to be assigned to or otherwise vested in the said (*termor*) as aforesaid. BUT nevertheless, in trust for the said (*purchaser*) his heirs and assigns, and to be assigned and disposed of from time to time as he, she, or they shall in writing, under his or their hand or respective hands, direct or appoint in that behalf; and in default of and until any such assignment or disposition shall be made and take effect, and in the mean time subject thereto, IN TRUST, and to the intent, that the now and then residue of the said term and estate hereby expressed, or intended to be so assigned, or so much thereof, of which no such assignment or disposition shall be made or take effect, shall and may attend and wait upon the freehold, reversion, and inheritance of the same hereditaments and premises, to and for the sole use and benefit of the said (*purchaser*), his heirs and assigns, in order that the same may be preserved and kept on foot, and prevented from merger, forfeiture, or other extinguishment thereof, and to protect the messuages, lands, tenements, and hereditaments therein comprised, from and against all subsequent, intermediate, and other incumbrances whatsoever, if any such there be. [AND in trust that he the said (*trustee*) his executors, administrators, and assigns, shall and do permit and cause the said term and estate, and all lawful and equitable benefit and advantage to be taken or had thereof, or therefrom, to be holden, enjoyed, and disposed of accordingly (1)]. And the said

To HOLD to the trustee for the residue of the term.

In trust to attend, &c.

Term surrendered to merge.

(1) If the term be intended to be merged, say,

"...HATH, bargained, sold, assigned, surrendered, and yielded up, and by these presents DOTH bargain, sell, as-

Vendor and Wife.

(*termor*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree, with and to the said (*purchaser*), his heirs and assigns [in manner following (that is to say)], that he the said (*termor*) hath not at any time or times heretofore, made, done, executed, committed, or knowingly occasioned, omitted, or suffered, or been party or privy to, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the messuages, lands, tenements, hereditaments, and premises, hereby surrendered, or mentioned or intended so to be as aforesaid, or any part thereof, or any estate or interest therein respectively, are, is, can, shall, or may be, in anywise impeached, charged,

Covenant by the termor that he has not incumbered.

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sign, surrender, and yield up unto the said (*purchaser*) and his heirs, all and singular the messuages or tenements, lands, and hereditaments, in and by the said in part recited indenture of the day of demised to the said and since assigned to or otherwise become vested in him the said (*termor*) as aforesaid, and expressed to be hereinbefore granted and released, with all and every the appurtenances to the said premises belonging, and all the estate, right, title, interest, term, and terms for years yet to come, property, claim, and demand whatsoever, both at law and in equity, of him the said (*termor*) of, in, to, or concerning the same. [TO HAVE AND TO HOLD the said messuage or tenement, lands and hereditaments, and all and singular other the premises, hereby released, assigned, and surrendered, or mentioned, or intended so to be, unto the said (*purchaser*), his heirs and assigns, to and for the end, intent, and purpose, that the said term of years, for the now residue thereof, and the estate and interest of him the said (*termor*) in the said premises, shall and may henceforth become merged and extinguished in the freehold reversion and inheritance of the same premises, so by these presents conveyed to, or otherwise vested in the said (*purchaser*) and his heirs as aforesaid, or otherwise cease, determine, and become void to all intents and purposes whatsoever."

To HOLD, to purchaser to intent to merge.

PURCHASES.

Vendor and Wife.

incumbered, or prejudicially affected, in any manner howsoever, or whereby the said term of years, or any estate or interest therein, can, or may be protected or prevented from being hereby merged and extinguished, according to the true intent and meaning of these presents. IN WITNESS, &c.

(C) Variation *where a Covenant for the Production of Title Deeds is contained in the Purchase Deed* (1).

Production of title deeds.

AND WHEREAS the several deeds, muniments, writings, and evidences of title, mentioned in the schedule hereunder written, relate not only to the hereditaments hereinbefore expressed to be conveyed to the said (*purchaser*) but also to other property of the said (*vendor*) of greater value, it has been agreed that the same shall remain in the custody of the said (*vendor*) upon his entering into such covenant for producing and delivering attested copies thereof as hereinafter is expressed. NOW THEREFORE the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*), his heirs, and assigns, that he the said (*vendor*), his heirs, and assigns, shall and will from time to time, and at all times hereafter, (unless prevented by fire or other inevitable accident) upon every reasonable request in writing, and at the expense of the said (*purchaser*), his heirs and assigns, produce and show forth, or cause to be produced and shown forth, in any part of the united kingdom of Great Britain and Ireland, to the said (*purchaser*) his heirs and assigns, or to his or their counsel, solicitor, or agent, or at or upon any trial, hearing, commission, or examination, in or directed by any competent court of judicature, [or before any justices of *nisi prius*, sheriff or sheriffs, escheater or escheaters, or other commissioners, or officers or officer, acting by virtue of any commission or writ issuing under the great seal of Great Britain, or out of any court of law or equity, or before any other magistrates, or at quarter sessions of the peace], or to any arbitrators or umpire lawfully appointed,

(1) See other forms of covenants for production of title deeds adapted to different circumstances, Vol. I. p. 196, *et seq.*

PURCHASES.

Vendor and Wife.

to be inspected, perused, pleaded, or given in evidence, as may be requisite, and upon, or for every or any other proper and reasonable occasion or purpose, all and every or any of the deeds, muniments, writings, and evidences, [mentioned in the schedule hereunder written, and also all and every other deeds, muniments, writings, and evidences, if any], not being of record, which relate unto, or in any manner affect the hereditaments and premises mentioned, or intended to be by these presents granted and released, or otherwise assured or intended so to be, and which now are or hereafter shall or may be in the custody or lawful power of him the said (*vendor*), his heirs, or assigns, or which he or they can or may procure without suit at law or in equity for the manifestation, support, defence, or justification of the possession, estate, right, title, or interest of the said (*purchaser*), his heirs, or assigns, or his or their trustees or trustee, of, in, to, or respecting the said hereditaments and premises, or any of them, or any part thereof. AND also shall and will at and upon the like request, expense, and costs, and for the like or any other reasonable purpose or purposes, make and deliver, with all due and reasonable diligence and despatch, unto the said (*purchaser*), his heirs, or assigns, or his or their trustee or trustees, or counsel or solicitor, true and attested copies of all and singular or any of the said deeds, muniments, writings, and evidences, or of any part or parts thereof respectively. AND also shall and will in the mean time, use and take, and cause to be used and taken, all due and proper care to preserve and keep the same deeds, muniments, writings, and evidences, from being lost, destroyed, cancelled, or otherwise defaced or injured. And further, that the said (*vendor*), his heirs, executors, administrators, or assigns, shall not nor will at any time hereafter part with or dispose of all or any of the said deeds, muniments, writings, and evidences out of his or their custody or power, without giving unto the person or persons to whom he shall or may part with or dispose of the same notice in writing under his or their hand or hands, of the covenant hereinbefore contained for producing the same as hereinbefore is mentioned.

PURCHASES.

Vendor and Wife.

Title deeds not delivered over.

"PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that if the said (*vendor*), his heirs or assigns, shall at any time hereafter sell or otherwise absolutely dispose of other his said lands or hereditaments of greater value than those now conveyed to the said (*purchaser*), and do and shall procure the purchaser or purchasers thereof, to enter into a like covenant to that which is hereinbefore contained, with the said (*purchaser*), his heirs and assigns, for the production of the said deeds, evidences, and writings, to him and them; then and in that case, but not otherwise, the covenants and agreements hereinbefore contained for that purpose, shall from thenceforth cease and be void, and at the request in writing and expense of the said (*vendor*), his heirs, executors, or administrators, shall be released, annulled, and extinguished in such manner as he or they shall reasonably require, any thing herein contained to the contrary thereof in anywise notwithstanding."

Vendor and Wife.

(D) *Variation where the Estate is the Wife's as a Feme Sole* (1).

THIS INDENTURE made the day of in the year, &c. BETWEEN the *(wife)* or *(husband and*

Wife's conveyance as a feme sole.

(1) When a feme covert by an agreement before marriage enjoys any part of her personal property independently of her husband, she may dispose of it either in her lifetime or by will, in like manner as if she were a feme sole; but if it be real property she cannot reserve this power by mere agreement, Peacock *v.* Monk, 2 Ves. 191. Fettiplace *v.* Georges, 3 Bro. Ch. Rep. 10; it must for this purpose be vested in some third person by actual conveyance, in which case if trusts are declared of it for such persons as she shall by deed or will appoint, she may dispose of such property, Burdon *v.* Dean, 2 Ves. jun. 608. Parkers *v.* White, 11 *ib.* 232; and may convey it by any ordinary conveyance, (operating as an appointment of the use in her trustees) without a fine or by will without the consent or confirmation of her husband, in like manner as if sole, she being as to her separate property considered as if she were not under coverture—see Peacock *v.* Monk, 2 Ves. 190. Wright *v.* Englefield, Amb. 468. Stamford *v.* Marshall, 2 Atk. 69. Wright *v.* Cadogan, 6 Bro. P. C. 156; but in the case of a will, although regularly it is an appointment of the use, to take effect after her death, it receives the same construction as a will, Southey *v.* Stonehouse, 2 Ves. 61; and must be treated and proved as a will in the spiritual court, George den. Thornbury *v.* , Amb. 627. Henby *v.* Philips, 2 Atk. 48. Ross *v.* Ewer, 3 Atk. 160. It is, however, common to make the husband a party to conveyances by married women, with a view of showing his consent or his covenanting for the title. But as her own act alone is competent to give effect to the instrument, and the husband being a party might raise suspicion of her acting under his influence, it should seem to be better that he should not be a party, unless the power is reserved to her expressly with, or at her election, without the consent of her husband, but where a feme covert is entitled to the estate itself, or to any interest in it whether vested or contingent, and

wife) of the one part, and (*the purchaser*) of the other part. WHEREAS by indenture bearing date, &c. and made be- PURCHASES. *Vendor and Wife.*

without any power of disposition over it during her coverture, being reserved or given to her, there is no means by which she can dispose of it except by fine (for the form of which, see *post*, p. 46), or by private examination in court; and see also Lee v. Muggeridge, 1 Ves. and B. 123. Richards v. Chambers, 10 Ves. 580. And the rule that a feme covert is to be considered in equity as a feme sole with respect to her separate property, is moreover to be understood with the exception of her trustee, with whom, on account of his supposed influence on her, she is not permitted to deal concerning it, Dalbiac v. Dalbiac, 16 Ves. 123; and also of her husband, any conveyance or contract in favour of whom, according to the more modern cases, would be set aside on the suspicion of its having been procured by an exercise of his marital authority—see Richards v. Chambers, 10 Ves. 580. Dalbiac v. Dalbiac, 16 Ves. 123. Lee v. Muggeridge, 1 Ves. and B. 118; which cases are, however, it is to be observed, contrary to many prior cases, where gifts made immediately to or in favour of the husband, of the wife's separate property, have been established—see Pawlett v. Delaval, 1 Ves. 518. 2 *ib.* 670. Ellis v. Atkinson, 3 Bro. Ch. Rep. 565; and indeed it seems hard that her husband should be the only person whom she is not permitted to benefit.

And in the conveyance of the separate estate of a feme covert it is not necessary that her trustee should join, unless it be expressly required by the instrument by which it was settled upon her, Pybus v. Smith, 1 Ves. jun. 193. Essex v. Atkins, 14 Ves. 547.

Upon this principle of a feme covert being able to dispose of her separate property as if she were sole, it has been held that she will be bound by her covenants, Legard v. Hodges, 2 Ves. jun. 138. 3 Bro. Ch. Rep. 531. (and vid. Power v. Bailey, 1 Ball and Beattie, 52); or her promissory note, Bullpin v. Clarke, 17 Ves. 365; relative to such property; as she will also by her bond, Norton v. Turville, 2 P. Wms. 144. and see 2 Ves. 193. and Sockett and Wray, 2 Atk. 58, a. or by the grant of an annuity payable out of her separate property, Essex v. Atkins, 14 Ves. 542; and her separate estate will be answerable to the extent of such

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tween, &c. the messuages, &c. hereinafter described, were limited to the use of such person or persons for such estate and estates, and intents and purposes as the said (*wife*) notwithstanding her coverture, and without the concurrence, consent, or privity of the husband, or with such concurrence, consent, or privity (1), at any time or times, and from time to time, by any deed or deeds, writing or writings, to be by her sealed and delivered, in the presence of and attested by two or more credible witnesses, or by her last will or testament in writing, or any codicil thereto, or any writing or writings purporting to be such, to be by her executed and attested as therein mentioned, should limit, appoint, or assure the same; and in default of any such limitation, appointment, or assurance, to the use of the said (*wife*) her heirs and assigns, as by the said indenture relation being had will more fully appear. And whereas, &c. (*recital of contract for the purchase*) and the said (*husband*) has agreed to become a party hereto for the purposes hereinafter expressed. Now this Indenture witnesseth, that for and in consideration of the sum of £ in hand paid to the said (*wife*) with the privity and approbation of the said (*husband*) testified, &c. the receipt whereof, &c. she the said (*wife*) by virtue of the power, limitation, or uses in and by the said recited indenture contained in that behalf and of all

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charges, Guise v. Small, 1 Anstr. 277. Master v. Salter, 1 Ves. 513. 4 Bro. C. C. 19. Bullpin v. Clarke, 17 Ves. 365; for which purposes therefore no examination in court is requisite, Richards v. Chambers, 10 Ves. 585, and see 13 Ves. 192.

In the case supposed, the conveyance by the feme may be by the wife alone, or in order that the purchaser may have the husband's covenant for the title, which if entered into by herself could not be enforced by the husband, and the wife of the one part and the purchaser of the other, as in the preceding precedent.—Then recite the conveyance, &c. to the wife.

(1) The limitation of property for the use of the wife is generally in this manner, lest the concurrence of the husband should give rise to a suspicion that the act of the wife was done under the control or influence of the husband.

other powers enabling her thereunto, hath limited and appointed, and by this present deed or writing by her sealed and delivered in the presence of the two credible persons whose names are hereon indorsed as witnesses thereto, doth limit and appoint that the said messuages, &c. hereinbefore described, with their and every of their appurtenances, shall be and remain; and that the said indenture and the limitations and uses therein contained, and all other assurances concerning the said premises, shall be deemed, construed, and taken to be and enure to the use and behoof of the said purchaser, his heirs and assigns for ever.

Add covenants by the husband (if a party) that the wife hath power to appoint, &c. as *post*, No. XXXIV. which, with the omission of the WITNESSING part by which the premises are granted and released, will be a proper mode for filling up the above skeleton of an appointment by a feme covert.

Husband and Wife by Fine.

XXXI. (A). *Conveyance by Husband and Wife (the Estate of the Wife) to a Purchaser by Fine* (1), *and Declaration to Uses.*

Variations *as in margin below.*

I. *The Fine.*

Concord of fine. *Middlesex* } COMMAND (2) *John Fordham, Esq.*
to wit. } (i. e. *the cognizors or deforicants, and Mary his wife*) (3), that justly, &c. they perform

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Fine formerly a common mode of conveyance.

(1) A conveyance by fine and declaration of uses alone was formerly not uncommon, (see West. Symb. par. 2, sec. 1, Conv. Light. p. 539, *et seq.* Perf. Conv. 45, *et seq.*) it is now, however, usually accompanied by a lease and release; but as its operation as a conveyance will be equally effectual without those assurances whenever the cognizor has a seisin of the estate, either in possession, remainder, or reversion; and as the very serious pressure of the stamp duties may, in some cases, render it eligible to re-adopt this mode of conveyance (particularly where a fine is necessary either to perfect the title, by reason of the wife of the vendor being entitled to dower; or where by reason of the estate being the inheritance of the wife, the fine, with the declaration of uses, is the only operative instrument), I have thought it right to introduce a form of such an assurance.

Parts of a fine.

(2) The first part or proceeding in a fine, is the præcipe or writ of covenant, which is followed by the *licence to agree*; the *concord* or *agreement*; and the *note* or *abstract*; all which are formed into what is termed the *foot, chirograph,* or *indenture* of the fine, which is that which is delivered to the cognizee, and accompanies the title deeds; but as the *concord* of the fine is its essential and operative part, and that alone which is prepared by the conveyancer, (the rest being framed by the officers of the court), it will be sufficient to give the form of the concord only.

(3) All persons, except the king and aggregate corporations, (and except also a feme covert without the concurrence of her husband, Co. Lit, 46, a. Moron's case, 2 Bla. Rep. 1205), are capable of conveying by fine, but in order to the operation of a

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to *Thomas Giles, Gent.* (*the purchaser*, i. e. *the cognizee or complainant*), the covenants made between them of (1) three messuages, fifty acres of land, &c. &c. (2), and unless, &c. (3).

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fine as against strangers, (i. e. persons not legally privy to the fine) it is requisite that either the cognizor or cognizee should have an estate of *freehold* at the time, in possession or remainder, see Dyer 3 b. 215, 3 Wils. 249. Jenk. Cent. 254, 274; and see 2 WILDE'S SUPP. No. XC. notes.

Undivided moiety, &c.

(1) If the vendor be entitled to a moiety or other undivided part only of the premises, say,

"Of one undivided moiety or half part of, &c." *or as the case may be.*

Of what fine may be levied.

(2) A fine may be levied of any species of property in *esse*, for which a writ of *præcipe quod reddat* will lie; not only messuages and lands therefore of every kind, but manors, honors, baronies, woods, waters, estovers, commons, (appendant or appurtenant, but not in gross or *sans nombre*), ways, ferries, piscaries, warrens, fairs, markets, waifs, estrays, franchises, services, advowsons, next presentations, rectories, tithes, (if impropriate) portions of tithes, oblations, offices, rents, annuities, New River shares, and the like, see Shep. T. c. 1. Shep. Prac. Couns. p. 1. Wilson 43, and whether they be holden in severalty or joint-tenancy, or whether in possession, remainder, or reversion, may be conveyed by fine. And a fine being founded upon and being the compromise of a real action, the hereditaments, &c. comprised in it must be described by their legal names, as in an adverse suit, as so many messuages, so many acres of arable land, so many acres of pasture land, &c. and not as in a deed by general descriptions, as farms, tenements, hereditaments, &c. Wheeler v. Heseltine, 2 Bos. and Pul. 560. Douze v. Reeve, *ibid.* 570; but with respect to the quantity of land, &c. as no more will be considered as passing by the fine

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(3) This "unless, &c." intends that,

"Unless he so do, then summon him within one month from the day of, &c. to show wherefore he has so done it."

PURCHASES.

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Concord.

AND the agreement is such (to wit) that the aforesaid John and Mary (*or other Christian name of the parties*) (1) have acknowledged the aforesaid messuages, &c. (2), with the appurtenances, to be the

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than what is described in the deed declaring the uses, even though a greater quantity be named in the concord; and on the contrary, any omission in the former will not, it has been said, be supplied by the deed of declaration of uses, Jenk. Cent. 254, (sed vide contra Eyton *v.* Eyton, 1 Bro. Par. Ca. 151). It is usual, *ex abundante cautelâ*, to name a much greater quantity than is actually intended to pass.

Parcels.

For the mode of describing different kinds of real property in a fine, see 2 WILDE'S SUP. No. XC. in notes.

And although the lands lie in different counties, they may be included in the same concord; but there must be a separate writ of covenant for each county, and the practice now is to have several concords also, see 1 Prest. Prac. 286.

Vendor a baron, &c.

(1) If the vendor or purchaser be a baron, say,

"The aforesaid Frederick Lord M."

But if above that degree, say,

"The aforesaid earl, marquis, &c."

Without the Christian name.

Several vendors.

If by two or more vendors, as joint-tenants, &c. say,

"The said John and Richard have acknowledged," &c.

But if both of them have the same Christian name, distinguish them, if father and son, by,

"The said John and John the younger."

And, if strangers, by the addition of their respective surnames, as,

"The said John Grange and John Hules."

(2) Or,

Parcels.

"Manors, lands, tenements, rents, commons, advowsons, tithes, moiety," &c. (*as the case may be*).

Where an advowson or tithes are the subject of the fine, the word "appurtenances" may be omitted, in which case say,

"The said manors, lands, tenements, rents, commons,

right of the said Thomas (*or other Christian name of the purchaser*) (1), as those which the said Thomas hath (2) of the gift of the said John and Mary. AND those they have remised and quit claimed from them the said John and Mary, and the heirs of the said Mary (3) to the aforesaid Thomas and his heirs (4) for ever. AND

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moiety, &c. with the appurtenances, and the advowson, and tithes aforesaid."

Several purchasers

(1) If there be two or more purchasers, say,

"To be the right of the said *Thomas*, (i. e. either but not both of the cognizees,) as those which the said *Thomas* and *James* have of the gift," &c.

See *post*, n. (3).

(2) If two or more vendors, say,

Several vendors.

"As those which the said *John* and *Richard* have of the gift," &c.

(3) If husband and wife of the husband's lands, say,

Husband's estate.

"And the heirs of the said (*John*)."

If other persons be the vendors, say,

Several vendors.

"From them the said *John* and *Richard*, and the heirs of the said *John* or *Richard*,"

Singly, and not to the heirs of both of them; for the fee, it is said, must be supposed to be in one of them only; see the next note.

(4) If the fine be levied to two or more purchasers, say,

Several purchasers.

"To the aforesaid *Thomas* and *James*, and the heirs of the said *Thomas*,"

And not to *their* heirs; "for (per Coke) the fee must determine in some one person in certain, and the conusance to them and the heirs of one of them, *come ceo*, &c. is consistent with the estate they had before, for if both had right, one had right, and the joint estate in fee is preserved to the parties by their preceding estate and agreement, against the express limitation

PURCHASES. MOREOVER the said John and Mary have granted for themselves and the heirs of the said Mary (1), that they will warrant to the aforesaid Thomas and his heirs (2), the aforesaid tenements, with the appurtenances, against them the said John and Mary, and the heirs of the said Mary (3) for ever. AND

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of the fine, 2 Co. 74 b. and vid. Shep. Touch. c. 15, s. 5. West. 5 Co. 58, 2 Mod. 49. In gavelkind lands, however, this form of limitation is allowed, (see Rob. Gavelk. 192), and there appears to be no legal principle or reason why the same limitation should not be admitted in respect of estates at the common law, and see 2 Mod. 49. 1 Prest. Conv. 287. 2 *ibid.* 90. 1 Ca. Op. 437.

Several vendors. (1) If there be several vendors, say,

"For themselves and the heirs of the said John, or any other of the vendors."

Several vendors. (2) If there are several vendors, repeat this warranty for each of them and his heirs, and if each vendor warrant only a particular portion of the lands, &c. say,

"And moreover the said (*one of the vendors*) hath granted for himself and his heirs, that he will warrant two messuages, &c. &c. with the appurtenances, parcel of the aforesaid messuages, &c. in A, and so for the rest."

Several purchasers. If the fine be to two or more purchasers, say,

"To the aforesaid Thomas and John, and the heirs of the said Thomas." See *ante*, p. 49. n. (4).

(3) Or,

"Them the said (John) and (Mary) and the heirs of the said John, &c.; or them the said John and Richard, or the heirs of the said John."

Or this warranty may, if there should be occasion, be made to extend to the father, grandfather, or other ancestor of the vendor, as,

"Against the heirs of the said A. the father of the said John, and against the heirs of B. the grandfather of the

for this recognition, remise, quit claim, warranty, fine, and agreement, the said Thomas hath given to the said John £ . . sterling (1).

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Taken, &c.

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said John, and all others claiming by or from the said A. and B. or either of them."

If the vendors agree to give a general warranty, say "against all men," instead of "against the said John and his heirs."

(1) As a fine operates by transmutation of possession, no consideration is necessary to give it effect; but like other common law conveyances, it will, if levied without a consideration, (and no uses are declared of it) enure back to the conusor himself, as of his preceding estate, Armstrong v. Wolsey, 2 Wils. 19; hence a consideration is usually inserted, although certainly not necessary where it is accompanied, as in the present case, by a deed declaring the use or purpose for which it is levied.

Consideration.

See further as to the levying of a fine by husband and wife, *ante*, No. XXXI. p. 14.

For the form of other species of fines, see WILDE's SUP. *voc.* FINE, and *notes* there.

Other fines.

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II. *Deed declaring the Uses* (1) *of the preceding Fine to a Purchaser.*

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor*) of, &c. and *Mary* his wife of the one part, and (*the purchaser*) of, &c. of the other part. (2) WHEREAS the said (*vendor*) and *Mary* his wife have con-

Parties.

Recital of contract.

Fine may operate as a conveyance.

(1) A fine will operate as a conveyance as well without as with a declaration of uses, if a sufficient and *bonâ fide* consideration be paid, but if no consideration be paid, it will, unless otherwise declared, enure, as has been before observed, to the use of the cognizor; to prevent any question arising, therefore, as to whether a sufficient consideration has passed between the parties or not, a fine is universally accompanied by a deed to lead or declare the use or purpose for which it was levied.

Declaration of uses to be by deed.

This declaration, when it respects a fine already levied, must be, by 4 and 5 Ann. c. 16. sec. 15, by *deed* (and it seems proper that the deed should be an indenture, see Downman's case, 9 Co. 7 b.), but if it respects a fine to be afterwards levied, the uses may be directed by any *writing* for that purpose, and vide Sug. Ven. and Pur. 455, n. (1). 2 Fonb. Equity, 41, n. (c), and vide also Bushel *v.* Burland, 11 Moore 197. It has, however, been considered prudent to declare the uses by *indenture*.

Date.

Where the deed is to lead the uses of the fine, the day must necessarily precede the fine, but it may be on the day of the acknowledgment. If the deed be to declare the uses, it must of course be dated subsequently.

Uses to bar dower.

(2) If the uses of the fine be intended to be declared for preventing a title to dower arising in the wife of the purchaser, make a trustee for that purpose a party with the purchaser, as *ante*, No. XXXI. p. 2. n. (1).

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tracted with the said *(purchaser)* for the sale to him of the lands and hereditaments hereinafter described, being the lands and hereditaments of the said *Mary* the wife of the said (*husband*) (1) at the sum of £ . And it has been agreed that the same shall be conveyed to him and his heirs, by such fine and declaration of the uses thereof, as hereinafter is expressed. (2) And whereas in pursuance of the said contract, the said *(vendor)* and *Mary* his wife as of term now last past (3), have in due form of law

(1) Where the estate of which the fine is levied is the husband's, it is very proper to state it to be so; but this is not so material when it is the wife's estate, as when a fine is levied by a married woman the presumption of law is that it is hers.

Intent of fine to be stated.

(2) A deed to declare the uses of fines should state, by way of recital, the intent for which it was levied, that it may be seen it was competent to effect the purposes in view.

Fine as of preceding Term.

(3) A writ for the foundation of a fine to be levied in the courts of Westminster, may be sued out in a vacation and made returnable on a preceding term; hence it is usual, in order to guard against the death of either of the parties before the return of the writ (which would render the subsequent proceedings voidable for error), Wright *v.* Mayor of Wickham, Cro. Eliz. 418. Clements *v.* Langhorne, 2 Ld. Raym. 872, to acknowledge the fine and sue out a writ of covenant as of the preceding term; but this cannot be done where the fine is levied in a court of peculiar jurisdiction, as in those of Wales and the counties palatine, where the writ of covenant must, by the rules of those courts, be returnable as of the next session, &c.

The modern practice is to have separate fines for lands lying in several counties, but this is not essential to the validity of the fine.

If there is a variance between the fine and the deed declaring the uses, as if the fine be levied of a different term to that mentioned in the deed; it is open to averment that it is not the same

PURCHASES.

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acknowledged [and levied] before His Majesty's Justices of the Court of Common Pleas at Westminster (1) unto the said (*purchaser*) and his heirs, a fine, *sur conusance de droit come ceo, &c.* with warranty, and with proclamations (2) thereupon had or to be had, according to the form of the statute in that behalf made and provided, and the common course of fines in such cases accustomed, by the names of ALL, &c. (3). Now THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £. (4) of lawful

WITNESS, declaration of uses of fine.

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fine, see Jones *v.* Morley, 1 Ld. Raym. 287; care should therefore be taken that the deed should be accurate in the recital of the term of which the fine is levied.

Jurisdiction. (1) The fine must be levied in a court having jurisdiction over the land affected by it. The court of common pleas has jurisdiction to this purpose over all lands in England, except they be situated in a palatinate, viz. Lancaster, Chester, and Durham, 2 Roll. Abr. 15, 2 Inst. 557, whether they be freehold or copyhold, or it should seem ancient demesne; but not over lands in Wales, Ireland, or the colonies; and by special custom, particular cities, &c. have the privilege of levying fines.

Proclamations. (2) It is usual to have a fine proclaimed under the stat. of 4 Hen. 7, c. 24, (and vide 32 Hen. 8. c. 36, and 4 and 5 Ann. c. 16), but this is necessary only where the purpose of the fine is to bar an entail or to operate as an estoppel, see 3 Co. 86, a. and also 1 Prest. Conv. 109.

Parcels. (3) As to the description of the parcels, see *ante*, No. XXX. p. 6. n. (2).

Consideration. (4) Unless there is a consideration moving from the cognisee, the use of a fine will, upon the presumed intention of the parties, result to the cognisor; but where the use is expressly declared to the cognisee, no consideration is requisite for the purpose of its so enuring; it is however proper as a protection against creditors, &c. not only that a consideration should be paid, but that it should be expressed in the deed.—This is also required by the late stamp acts.

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money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*vendor*) and *Mary* his wife in hand, well and truly paid by the said (*purchaser*), at or before, &c. the receipt, &c. (1) it is hereby granted, declared, and agreed by and between the said parties hereto, that as well the said fine so as aforesaid, or in any other manner, or at any other time acknowledged, had and levied of the said premises, as also all and every other (2) fine and fines, and other assurances in the law whatsoever, heretofore, or hereafter to be acknowledged, had, made, levied or executed of the said hereditaments and premises or any part thereof, either separately or together with any other hereditaments by and between the parties to these presents, or any of them, either alone or jointly with any other person or persons, or whereunto they or any of them was, were, are, is, or shall or may be parties or privies, or party or privy, shall from and after the levying and perfecting thereof, be and enure, and be construed, deemed, adjudged, and taken to be and enure, and is and

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(1) State the payment and acknowledgment of the consideration, as in a deed of conveyance, see *ante*, No. XXXI. p. 3. Other fines, &c.

(2) It is sufficient to direct or declare the uses of the particular fine levied, but experience and the information derived from the decided cases, have dictated the caution that the declaration should extend to all other fines, &c. levied, or to be levied, of which the uses are or shall be in an executory state, so as to be reached by this declaration, and see 1 Prest. Conv. 117.

PURCHASES.

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are hereby declared to have been, and to be at the time of the making, levying, suffering, and executing the same, meant and intended to be, and enure, and the cognisee or cognisees in such fine or fines, or other assurance or assurances named, or to be named, or any of them, or to whom the same have or hath been, or shall or may be so levied, made or executed, and his and their heirs, shall stand and be seised of such and so many of the said hereditaments and premises comprised in the said fine or fines, or other assurance or assurances as are hereinbefore particularly described or intended so to be, with their and every of their appurtenances. "To the use and behoof of the said (*purchaser*), his heirs and assigns for ever (1)." IN WITNESS, &c.

Signed, sealed, and delivered, &c. (2).

Resulting use.

(1) If no uses are declared of a fine, nor any consideration expressed, to carry the use to the cognisee, the use will, as has been before observed, result to the cognisor; but as this rule of law arises only from a presumption that such was the intent of the parties, and may therefore be rebutted by other evidence, it is proper that the use should be expressly declared, even though it be intended to enure to the cognisor himself, and see 2 Bla. Com. 363.

Where other uses are to be declared than those to the cognisee, say,

Uses to bar dower.

"Unto the said cognisee and his heirs, to the use," &c.

And if the use of the fine be intended to be declared for preventing dower in the wife of the purchaser, insert the form of limitation for that purpose contained in No. XXXI. *ante*, p. 31. instead of the words within inverted commas, and

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(2) See *ante*, p. 52. n. (1.)

PURCHASES.

Husband and Wife by Fine.

Ulterior uses.

when it is intended that the fine should have a further operation than enuring to the use of the cognisee or others, as to bar an entail to bar by non-claim or the like, and particularly in cases where the fine will have that particular operation or not, accordingly as it is or is not the intent of the parties that it should; such intent should be expressed,

" And to the further intent and purpose that by reason and means of the said fine, and by virtue of the statute in such case made and provided, a certain legal interest now outstanding in, &c. (*as the case may be*) and all and every latent and other estates, rights, titles, and interests whatsoever, if any such there be affecting the said premises, shall and may be henceforth and for ever barred and destroyed and utterly extinguished."

See further on a declaration of uses of a fine, *ante*, No. XXXI. p. 17.

No. XXXII.

Conveyance by two or more *Joint-tenants to a Purchaser.*

Variations *where they are* Coparceners.
Also where they hold the Premises as Copartners in Trade.
Where the Purchaser takes to Uses to bar Dower.

Parties.

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (1) (*the vendors*) of, &c. of the one part, and the *(purchaser)* of, &c. of the other part. WHEREAS (2), &c. AND WHEREAS

Wife.

(1) If the vendors be tenants in common, or coparceners, and the wife or wives of either or both of them have a title to dower out of the land to be conveyed (which may in some cases happen even with respect to coparceners) make her a party, and vary the draft agreeably to No. XXXI. margin (*w, w,* &c.); but if they be joint-tenants, this title cannot arise.

Dower.

If the conveyance be intended to be made to uses to bar a title to dower, see *ante,* No. XXXI. margin (*d, d,* &c.).

Tenants in common.

If the vendors be tenants in common, and either or both of them took the estate to a trustee or trustees for preventing dower, see *post,* No. XXXIV. margin (*t, t*).

Recitals.

(2) Recite the deed or will by which the vendors became entitled.—For forms or recitals of different kinds of deeds, &c. see INDEX *voce* RECITALS.

PURCHASES.

Joint-tenants, &c. to Purchaser.

the said (*purchaser*) hath contracted with (1) the said (*vendors*) for the absolute purchase of the said messuages, lands, and hereditaments, free from incumbrances (other than as hereinafter is mentioned), at the sum of £ [and hath requested that the same may be conveyed and assured to him in the manner hereinafter expressed.] NOW THIS INDENTURE WITNESSETH (2), that in pursuance and execution of the said contract, and in consideration (3) of the sum of £

WITNESS, the vendors in consideration of the purchase money.

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(1) If the estate was sold by public auction, see *ante*, No. XXXI. p. 4. n. (1). Auction.

If the sale were before a Master in Chancery or Deputy Remembrancer of the Court of Exchequer, see No. XVI. p. 163, n. (4). Sale by order of court.

(2) Of the witnessing part of a deed, see Vol. I. No. XV. p. 123, *et seq.* Notes, and 4 Elem. Conv. 2d Ed. p. 98.

(3) If the consideration was other than money to be paid at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6), *et seq.* Consideration separately paid.

Or the consideration, when money, may be divided thus,

"For and in consideration of the sum of £ of lawful money, &c. in hand well and truly paid to the said (*one of the vendors*) at or before the sealing and delivery of these presents, &c. as and for the absolute purchase of one full undivided moiety or half part (*or as the case may be*), (the whole into two equal parts being considered as divided), of and in the said lands and hereditaments, the receipt whereof, and that the same is in full, &c. (*as in the text*); and for and in consideration of the sum of £ of like lawful and current money, in hand at the same time well and truly paid to the said (*other vendor*) as or for the purchase of the other undivided moiety or half part (the whole being so considered as divided as aforesaid), of or in the same lands and hereditaments, the receipt whereof, &c."

PURCHASES.

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of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendors*) in hand paid in equal moieties or half parts by the said *(purchaser)*, at or immediately before the sealing and delivery of these presents, the receipt whereof, [and that the same is in full for the absolute purchase of the inheritance in fee simple, in possession, of the messuages, lands, tenements, and hereditaments hereinafter described], the said (*vendors*) do and each of them doth hereby expressly acknowledge, and of and from the same do and each of them doth fully and absolutely acquit, release, discharge, and exonerate the said *(purchaser)*, his heirs, executors, administrators, and assigns. They the said *(vendors)* have, and each of them hath, granted, bargained, sold, aliened, and released (1), and by

Grant and release the land, &c.

Tenants in common.

" He the said (*one of the vendors*) as to and concerning one undivided moiety or half part, hath granted, bargained, sold, &c. and by these presents doth, &c. and he the said (*other vendor*) as to and concerning one other undivided moiety or half part, hath granted, bargained, sold, &c." *as above.*

Difference between joint-tenants, coparceners, &c.

(1) Joint-tenants, tenants in common, and coparceners, may together grant the entire estate, or each of them his own particular portion, to a third person, by feoffment, recovery, fine, lease and release, or other conveyance adapted to transfer the possession; but if either of them would convey his part to a co-tenant, there is this difference, that *joint-tenants* being seised of the entirety, as well as of their own respective part, may convey to each other by release alone; for it would be nugatory to attempt to transfer the possession to a person who already has it. And *coparceners* being likewise seised of the entirety, may convey to each other in like manner; but the seisin of co-

these presents do, and each of them doth grant, bargain, sell, alien, release, and confirm, unto the said (*purchaser*) and his heirs, ALL, &c. (1) or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other messuages, lands, tenements, and hereditaments (if any) comprised in the indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all houses (2), out-houses, buildings, barns, stables, coach houses, dove houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every

PURCHASES.

Joint-tenants, &c. to Purchaser.

General appurtenances.

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parceners being less entire and united than that of joint-tenants, (as their several moieties will upon their decease go to their respective representatives) they may likewise convey to each other by feoffment, fine, lease and release, &c. But *tenants in common* having a distinct seisin of their respective moieties, must convey their parts to each other by the same species of assurance which would be requisite to transfer them to a stranger.

If the premises be copyhold, see Vol. I. No. XVIII., and if part only copyhold, see *ib.* No. XX. and XXI. Copyholds.

(1) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172, and *ante*, No. XXXI. p. 6, and see descriptions applicable to different species of property, INDEX *voce* PARCELS. Parcels.

(2) See general words applicable to different kinds of real property, and INDEX, *voc.* GENERAL WORDS. General words.

PURCHASES.

Joint-tenants, &c. to Purchaser.

kind, and all], and all manner of [other] rights, privileges, easements, advantages, appendants, and appurtenances whatsoever, to the said hereditaments, and premises, or any part thereof, belonging [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (1). ALL which said messuages, lands, tenements, and hereditaments are now in the possession of or legally vested in the said (*purchaser*) by virtue of a bargain and sale for a year (2), to him thereof made by the said (*vendors*) for five shillings consideration, by an indenture bearing date on the day next before the date of these presents, [for the term of one year, commencing from the day next preceding the date of the same indenture], and by force of the statute made for transferring uses into possession) [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, and proceeds thereof, to arise or become payable from and after the day of now last past. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity,

Reference to the bargain and sale for a year.

Exception.

(1) Insert here any appurtenances, as right of way or the like, which is to be excepted.

Lease for a year.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

of them the said (*vendors*) and of each of them respectively, in, to, or respecting the said hereditaments and premises or any part thereof, [TOGETHER with all deeds, muniments, and writings whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendors*) or either of them, their or either of their heirs or assigns, or of any person or persons from whom they or any or either of them can or may procure the same without action or suit at law or in equity; and true and attested copies, duly stamped, when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, (not being of record), so in his or their or any or either of their custody or power, or which can or may be procured without action or suit as aforesaid, and in anywise relate to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies, when first required, to be made and delivered at the expense of the said (*vendors*) their or some or one of their heirs, exe-

PURCHASES.

Joint-tenants, &c. to Purchaser.

Grant of title deeds.

And copies.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

Joint-tenants, &c. to Purchaser.

cutors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same. To HAVE AND TO HOLD (1) the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereby granted and released, or otherwise assured, or intended so to be, unto the said *(purchaser)* his heirs and assigns, to and for the use and behoof of him the said *(purchaser)* his heirs and assigns for ever." (2). AND (3) they

To HOLD to the purchaser in fee-simple.

Habendum.

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes, and 4 Elem. Conv. 2d edit. p. 112.

Uses to bar dower.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said (*purchaser*) and his heirs, to, and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

and add the limitation inserted, *ante*, No. XXXI. p. 31.

Covenants.

(3) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes, and 4 Elem. Conv. 2d edit. p. 123.

Vendors co-partners.

If the vendors hold as copartners in trade, and it was declared in the deed of conveyance to them that the premises shall be taken and considered as personal estate, which is frequently done, it may here be added,

"And so and in such manner, and to the intent, and it is hereby declared, that the same may and shall be and be considered as real estate, to all intents and purposes whatsoever, any thing in the said hereinbefore in part recited indenture declared or expressed to the contrary in anywise notwithstanding."

Wife.

If the wife of either of the vendors be a party, add here a covenant to levy a fine; for the form of which see No. XXXI. p. 14.

the said (*vendors*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and not jointly, or the one for the other of them, or the heirs, executors, or administrators, of the other of them, but each for himself only, and his own heirs, executors, and administrators, and for his own undivided moiety or half part only, of and in the lands and hereditaments hereinbefore mentioned to be by these premises granted and released, do and doth (1) hereby covenant, and declare, with

Joint-tenants, &c. to Purchaser.

Covenant by vendors that they are seised in fee.

If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here.—See the form of such covenant, Vol. I. No. XX. p. 266. Copyhold.

(1) If it be more satisfactory to either of the parties that each should enter into distinct covenants for the title relative to his or her own particular share, the form may be varied thus: Distinct covenants.

"And each of them the said (*vendors*) severally and apart from the other of them, for himself, his heirs, executors, and administrators, as to and concerning the undivided moiety or half part so hereinbefore by him granted and released, or otherwise assured, or intended so to be."

Or,

"And the said (*one of the vendors*) for himself, his heirs, executors, and administrators, in respect of and so far as relates to or concerns his own undivided moiety or half part, of and in the lands and hereditaments hereinbefore granted and released; and the said (*other vendor*) for himself, his heirs, executors, and administrators, in respect of and so far as relates to and concerns his own undivided moiety or half part of and in the said lands and hereditaments (*and so on according to the number of the vendors*) and each and every of them doth covenant," &c. *as in the text.*

This mode of covenanting in severalty is particularly proper

PURCHASES.

Joint-tenants, &c. to Purchaser.

and to the said (*purchaser*) his heirs and assigns, in the manner following, (1) (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered, by them the said (*vendors*) or any or either of them to the contrary, (2) each covenanting separately as aforesaid, they the said (*vendors*) at the time of the sealing and delivery of these presents, are, or some or one of them is, lawfully, rightfully, and absolutely seised in their or his demesne as of fee, in their or his own right, and to their and his own use, of all and singular the messuages, lands, tenements, hereditaments, and

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where the covenant is to levy a fine, that it may not pass or estop any greater portion or interest, than the cognizee is actually entitled to.

Wife. (1) If the wife of either of the vendors be a party, make these covenants accord with that circumstance, as in No. XXXI. p. 2.

Tenants in common. If the vendors be tenants in common, and either or both of them took the estate to a trustee for preventing dower, see *post*, No. XXIV.

Copyhold. If part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of Vol. I. No. XX. p. 269.

Vendors entitled by devise, &c. (2) If either of the vendors became entitled by devise; or by voluntary conveyance, as a marriage settlement; add,

"Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

or by descent. If by descent, add,

"Or any of his ancestors," and see Vol. I. No. XV. p. 141. n. (39); and No. XVI. p. 178. *et seq.* in notes.

premises hereinbefore granted and released, or otherwise assured, or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, as or in the nature of joint-tenants (*or* coparceners, *or* tenants in common, *as the case may be*) or otherwise, without the said estate or premises being subject or liable to any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same estate in any manner howsoever, save only and except (1). And *also*, that for and notwithstanding any such act, deed, matter, or thing, each so covenanting separately as aforesaid, they the said (*vendors*) or some of them, now have in themselves, or one of them hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release and assure, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, "unto and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these presents.

PURCHASES.

Joint-tenants, &c. to Purchaser.

And have right to convey.

(1) Insert here any other claim or incumbrance that may be upon or affecting the estate. Incumbrances.

PURCHASES.

Joint-tenant's, &c. to Purchaser.

That the purchaser shall quietly enjoy.

AND further, that (1) "he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their rights, members, and appurtenances (each of them the said (*vendors*) covenanting so far as respects his own particular moiety, half part or proportion only); and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner

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(1) If the conveyance be to uses to bar dower, those parts of this and the preceding covenant, which are included within inverted commas, will be more correct, if framed thus,

Uses to bar dower.

"That he the said (*vendor*) hath in himself full power and lawful right and title to grant unto the said (*purchaser*) and his heirs, to, and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

PURCHASES.

Joint tenants, &c. to Purchaser.

of hindrance, interruption, claim or demand whatsoever, by or from the said (*vendors*) or any or either of them, or their or any or either of their heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for them, or any or either of them (1). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise, by and at the expense of the said *(vendors)* their or some or one of their heirs, executors, or administrators, effectually protected, and indemnified from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills,] conveyances, assurances, [descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, liens, and

Free from incumbrances.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 66, n. (2).

Vendor taking by devise, &c.

PURCHASES.

Joint-tenants, &c. to Purchaser.

incumbrances whatsoever, which at any time or times heretofore have been, or at any time hereafter shall or may be made, executed, committed, created, occasioned, or knowingly suffered by the said *(vendors)* or any or either of them, or any person or persons claiming or entitled to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, means, or defaults.

Covenant for further assurance.

AND moreover that they the said (*vendors*) (1), and each and every of them, their and his heirs, and all and every person and persons, now or at any time hereafter rightfully claiming, or entitled to claim any estate, or interest, at law or in equity, in, to, out of, upon, or relating to the hereditaments and premises, hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for them, or any or either of them respectively, or by or through their or any or either of their acts, means, or defaults (2), shall and will from time to time, and at all times hereafter, upon the request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure

(1) Or the parties may covenant severally, as *ante*, p. 65, n. (1).

Leases.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 87, n.

PURCHASES.

Joint-tenants, &c. to Purchaser.

to be made, done, acknowledged, levied, suffered, executed, and perfected,] with all proper expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters and things whatsoever, [whether by feoffment, fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or otherwise, release, confirmation, limitation or declaration of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, and more perfectly, fully, and effectually, or satisfactorily conveying, and assuring the same hereditaments and premises, and every or any part thereof, and the possession, reversion, and inheritance of the same, with their and every of their rights, members, appendants, and appurtenances, unto, and to and for the use, behoof, and benefit of the said *(purchaser)* his heirs and assigns, in such manner and form as he or they, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require (1). IN WITNESS, &c.

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(1) If a full form be desired, add here as in No. XXXI. p. 26. Full form.

If there be an outstanding term, which is to be assigned or surrendered, see *ante*, No. XXXI. p. 34. Outstanding term.

If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196. Production of deeds.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, Provisoes, &c.

PURCHASES. or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Joint-tenants, &c. to Purchaser.

Stamp. *** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi.

Execution, &c. As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.*

No. XXXIII.

Conveyance by a Vendor *and his* Trustee *to bar Dower, in the* old form (1), *to a Purchaser* (2).

Variations *where the Conveyance is made to uses to bar Dower.*

THIS INDENTURE of three parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor*) of, &c. of the first part, (*the vendor's trustee*) of, &c. of the second part, and (*the purchaser*) of, &c. of the third part (3). WHEREAS by indentures of lease

Parties.

Recital of conveyance to the vendor and his trustee.

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(1) Although the old form of limitation for preventing dower has, among good conveyancers, been entirely superseded by the modern form, see *ante*, Vol. I. p. 442, n. (1). Yet, as it is frequently met with in titles which have not been very recently brought forward, I have thought it right to give the form of a conveyance from a vendor taking under such limitation.

Old form to bar dower.

(2) If the vendor be entitled in remainder or reversion, see ib. No. XXIV.

Reversion, &c.

If the conveyance be of an equity of redemption only, see ib. No. XXV.

Equity of redemption.

If a moiety or other undivided part, see ib. No. XXVI.

Moiety, &c.

(3) If the purchaser be married, and his wife dowable, make a trustee party, as,

Wife of purchaser.

PURCHASES.

Vendor and Dower-Trustee, (Old Form).

and release, bearing date respectively on or about the and days of , which was in the year and made or expressed to be made between A. B. of, &c. of the first part, the said *(vendor)* of the second part, and the said (*trustee*) of the third part, the messuages, lands, and hereditaments hereinafter described, were conveyed and assured unto and to the use of the said (*vendor*) and (*trustee*) and their heirs, but as to the estate and interest of the said (*trustee*) in trust, for the said (*vendor*), his heirs and assigns, for ever. AND WHEREAS the said (*purchaser*) hath contracted (1) with the said (*vendor*) for the absolute purchase of the said lands and hereditaments, free from incumbrances, (other than as hereinafter is mentioned), at the sum of £ and the same are now intended to be conveyed to him and his heirs. NOW THIS INDENTURE WITNESSETH (2), that in pursuance of the said contract, and in consideration of the sum of £ of lawful current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendor*) in hand

Contract for purchase.

WITNESS, in consideration of the purchase money.

" Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2, n. (1).

Outstanding term. If there be an outstanding term, see Vol. I. No. XXVII. p. 401, 430.

Auction. (1) If the premises were sold by public auction, see *ante*, No. XXXI. p. 4, n. (1).

Order of court. If by order of court, see Vol. I. No. XVI. p. 163, n. (4).

WITNESS. (2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123, *et seq.* also 4 Elem. Conv. 2d edit. p. 98.

PURCHASES.

Vendor and Dower-Trustee, (Old Form).

well and truly paid (1) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, [and that the same is in full for the absolute purchase of the inheritance in fee simple, in possession of the messuages, lands, and hereditaments hereinafter described, and intended to be hereby conveyed], the said (*vendor*) doth hereby acknowledge, [and of and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said messuages, lands, and hereditaments by these presents]. He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm, [and in consideration of the sum of five shillings of lawful current money aforesaid, in hand, at the same time paid by the said (*purchaser*) to the said (*trustee*) (the receipt whereof is hereby acknowledged) he the said (*trustee*) with the privity and by the direction of the said (*vendor*) testified by his sealing and delivering these presents, HATH bargained, sold, aliened, and released, and by these presents DOTH bargain, sell, alien, and release, and by way of conveyance only and not for or by way of warranty of title, doth grant (2) and confirm unto

Vendor and trustee grant, release, &c.

(1) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6). *et seq.*

Consideration.

(2) The qualifying words introduced here before those of

"Grant" does not imply a warranty of freehold.

PURCHASES. *Vendor and Dower-Trustee, (Old Form).*

the said *(purchaser)* and his heirs (1), ALL (2), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, or described; and also all other messuages, lands, and hereditaments (if any) described or comprised in the indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses (3), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other]

Parcels.

General appurtenances.

"grant and confirm," are inserted with a view of removing the scruples which trustees frequently have in using those words, from a supposition that they imply a warranty for the title; there does not however seem to be any sufficient reason for ascribing this forcible operation to them in the conveyances of estates of freehold. And see Co. Lit. 384, a. n. (1).

Copyhold. (1) If the premises are copyhold, see Vol. I. No. XVIII.

If part copyhold, see ib. Nos. XX. XXI.

Outstanding term. If there be an outstanding term to be surrendered, see *ante*, No. XXXI. p. 6, n. (1).

Parcels. (2) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d. edit. p. 104.

General words. (3) Adapt the general words to the nature of the property, and for which purpose see INDEX *voc.* GENERAL WORDS.

rights, privileges, easements, appendants, and appurtenances whatsoever, to the said hereditaments and premises, or any part thereof, belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or hereafter lawfully holden, used, occupied, or enjoyed], except, &c. (1). All which said [messuages, lands, tenements, and hereditaments], are now in the possession of or legally vested in the said (*purchaser*) by virtue of bargain and sale (2) for one year to him thereof made by the said (*vendor and trustee*) for five shillings consideration by an indenture bearing date on the day next before the sealing and delivery of these presents, [and by force of the statute made for transferring uses into possession], and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and all and every the rents, issues, profits, and proceeds thereof. And all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, [both at law and in equity], of them the said (*vendor and trustee*) and of each of them respectively, in, to, or upon the said hereditaments and premises, or any part thereof: [Together with all deeds, muniments, and writings

PURCHASES.

Vendor and Dower-Trustee, (Old Form).

Reference to the bargain and sale.

Title deeds.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

(2) See the form of the bargain and sale for a year, Vol. I. No. XIII. p. 110; and No. XIV. p. 117. Lease for year.

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Vendor and Dower-Trustee, (Old Form.)

whatsoever, in any wise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*), his heirs, executors, or administrators, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or equity (1); and true and attested copies duly stamped as and when the said (*purchaser*), his heirs or assigns, shall require the same, of all deeds, muniments, and writings, not being of record, so being or to be in his or their custody or power, or to be procured as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof jointly with other hereditaments of property of equal or greater value, such copies when first required to be made and delivered at the expense of the said (*vendor*), his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same.

Attested copies.

To hold to the purchaser in fee-simple.

TO HAVE AND TO HOLD (2) the messuages, lands, tenements, hereditaments, and premises, herein-

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Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

Habendum.

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

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before and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be [with their and every of their rights, members, privileges, appendants, and appurtenances], unto the said (*purchaser*) and his heirs, "to the use and behoof of him the said (*purchaser*), his heirs and assigns for ever (1)." AND the said (*trustee*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*purchaser*), his heirs and assigns, that he the said (*trustee*) hath not at any time heretofore [either alone or together with the said (*vendor*)] made, done, or knowingly executed, [nor caused or procured to be made, done, or executed, nor been party or privy to] any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured, or intended so to be, or any part or parcel thereof, [or the said estate or interest expressed to be hereby granted and released, or otherwise assured therein], are, is, or can or may be impeached, charged, incumbered, or prejudicially affected in estate, right,

Covenant by vendor's trustee that he has not incumbered.

(1) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

Add the limitation referred, *ante*, No. XXXI. p. 10. n. (3).

PURCHASES.

Vendor and Dower-Trustee, (Old Form).

title, value or otherwise howsoever. And (1) the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*), his heirs and assigns, in the manner following, that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by them the said (*vendor*) and (*trustee*) or either of them to the contrary, they the said (*vendor*) and (*trustee*), at the time of the sealing and delivery of these presents, are, or one of them is lawfully and rightfully seised of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, as of or for a clear, absolute, and indefeasible estate of inheritance, in fee simple in possession, without the said estate or premises or any part thereof, being subject or liable to any manner of trust, condition, qualification, restriction, matter or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever (2). And also, that for and notwithstanding any such act, deed, matter, or thing, as aforesaid, they the said (*vendor*) and (*trustee*) now have in

Covenant by vendor that he and his trustee are seised.

Have right to convey.

Covenants.

(1) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Leases.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 22, n. (2).

Vendor and Dower-Trustee, (Old Form).

themselves, or one of them hath in himself, full power, and lawful and absolute right and title to grant, release, and assure all and singular the said hereditaments and premises [and the possession, reversion, and inheritance thereof], unto "and to and for the use and behoof of the said (*purchaser*), his heirs and assigns(1)," in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises [with their and every of their respective rights,

Quiet enjoyment.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

PURCHASES.

Vendor and Power-Trustee, (Old Form).

privileges, appendants and appurtenances], and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit (1), without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter lawfully, rightfully or equitably entitled to or claiming the said hereditaments and premises or any part thereof, or any estate, right, title, or interest therein or thereto, from, through, under, or in trust for him or them, or his or their acts or defaults (2). AND that free and clear, or by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually defended, protected, and indemnified, from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, devises, conveyances, assurances; uses, trusts, entails, conditions, dower, remainders, or reversions in the crown, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record; debts due to the king or any of his predecessors, legacies, portions, annuities, rents, forfeitures, rights of entry, and

Free from incumbrances.

Outstanding term.

(1) If an outstanding term is to be assigned by the purchase deed, to attend the inheritance, see No. XXXI. p. 24, n. (1).

Leases.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 25, n. (1).

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cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time heretofore have been, or which at any time hereafter shall be made, created, executed, committed, occasioned, or suffered, by him the said (*vendor*), or any other person or persons so now or hereafter claiming or entitled as last aforesaid, except, &c. (1). AND moreover, that they the said (*vendor*) and (*trustee*), and all and every person or persons now or at any time hereafter rightfully claiming, or possessing any estate, right, title, or interest [at law or in equity], in, to, or out of, the messuages, lands, tenements, hereditaments and premises hereinbefore granted, and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for them or any or either of them, or by or through their or any or either of their acts or defaults, shall and will from time to time and at all times hereafter, upon every reasonable request, and at the cost and expense of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect [or cause or procure to be made, done, acknowledged, levied, suffered, executed and perfected], all and every such further and other lawful acts, deeds, convey-

Further assurance.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212, 427.

Except, &c.

PURCHASES.

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ances, matters, and things whatsoever [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled, feoffment, release, confirmation, declaration, limitation, or appointment, of or to any use or uses, or other assurance or assurances, of record or not of record] for the further and better, or more satisfactorily granting, releasing, conveying, confirming and assuring the same messuages, lands, tenements, hereditaments, and premises, or any part thereof, [with their and every of their rights, members, appendants, and appurtenances, and the possession, reversion, and inheritance of the same], free from incumbrances as aforesaid, unto and to and for the use and behoof of the said *(purchaser)*, his heirs and assigns, in such manner and form as he the said *(purchaser)*, his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister), shall advise and require (1). IN WITNESS (2), &c.

Full form. (1) If there be no wish that the deed should be particularly concise, add, as *ante*, No. XXXI. p. 29.

Outstanding term. (2) If there be an outstanding term, which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 34.

Rent charge. If the premises are subject to a rent-charge or the like, see Vol. I. p. 212, 427.

Production of deeds. If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title,

or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* PURCHASES.

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*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28); *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.* Execution, &c.

PURCHASES.

Vendor and Dower-Trustee, (Modern Form.)

No. XXXIV.

Conveyance by a Vendor *and his* Trustee *for preventing Dower (in the* Modern Form*) to a Purchaser* (1).

Variations *where the Conveyance to the Purchaser is to Uses to bar Dower, &c. &c. as in margin below.*

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord BETWEEN *(the vendor)* of, &c. of the first part, *(the vendor's trustee)* (2) of, &c. of the

Reversion, &c.

Moiety, &c.

Trustee party.

(1) If the vendor be entitled in *remainder* or *reversion*, see Vol. I. No. XXIV.

If to a *moiety* or other *undivided part* only, see *ib.* No. XXVI.

(2) As the trustee in the usual form of limitation for preventing dower, takes a vested estate in remainder, subject to the life estate limited to the purchaser, and his power of appointment, and would take a freehold in possession on the forfeiture of such life estate, it is proper that he should be made a party to any future conveyance; and see 2 Ca. Op. 29, Purefoy *v.* Rogers, 2 Saund. 380, and notes there; because, should the donee have destroyed his power of appointment, it will be necessary that the trustee should convey such vested estate in remainder; and should the purchaser have forfeited his life estate, a purchaser taking from the vendor (or last purchaser), without the concurrence of the trustee, would not be able to maintain an ejectment, for want of having the freehold in possession in him. Where, how-

PURCHASES.

Vendor and Dower-Trustee, (Modern Form.)

second part, and *(the purchaser)* of, &c. of the third part (1). WHEREAS (2) by indentures of lease and release, bearing date respectively on or about the and days of which was in the year , and made or expressed to be made between &c. of the first part, the said *(vendor)* of the second part, and the said *(trustee)* of the third part, the messuages, lands, and hereditaments, hereinafter described, were conveyed and assured, and the same now stand limited to the use of such person and persons, for such estate and estates, interest and interests, and to and for such ends, intents and purposes, and upon such trusts, and subject to such powers, provisoes, conditions, restrictions, limitations, declarations, and agreements as the said (*vendor*) his heirs

Recital of conveyance to the vendor and trustee.

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ever, the purchaser is satisfied that the power is in full force, and capable of being efficiently exercised by the donee, the concurrence of the trustee may be dispensed with. Sed vid. Watk. Princ. p. 21. 1 Fearn, Cont. Rem. 589. n. * Co. Lit. 216 a. n. (2). 379 b. n. (1). In Maundrell v. Maundrell, however, Eldon, Ch. is reported to have said, that no good conveyancer would approve a draft without the trustee being a party.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as Wife of purchaser.

" Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2. n. (1); and see Vol. I. No. XXVIII.

If there be an outstanding term, see Vol. I. No. XXVII. p. 401, 430; and *ante*, No. XXXI. p. 2, n. (1). Outstanding term.

(2) As to recitals, see Vol. I. p. 162, in notes; also 4 Elem. Conv. 2d edit. p. 107.; and for the form of recitals of different species of deeds, &c. see INDEX *voc.* RECITALS. Recitals.

PURCHASES.

Vendor and Donee-Trustee, (Modern Form)

appointees or assigns should at any time or times, by any deed or deeds, instrument or instruments in writing, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, direct, limit, or appoint (1); and in default of, and until such direction, limitation, or appointment should be made, and when and as any estate or estates, interest or interests thereby directed, limited, appointed, or created, should determine, and in the mean time subject

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Recital of power.

(1) It is not absolutely *necessary* that the vendor's power of appointment should be recited, or even referred to in the deed by which it is exercised—see Profert *v.* Morgan, 1 Atk. 440. Ex parte Caswall, ib. 559, but it is always proper that it should be so far noticed as to prevent the existence of any doubt whether his intention was to execute his power, or to pass his estate (if he have any) in the land—see Moulton *v.* Hutchinson, 1 Atk. 558; Andrews *v.* Emmatt, 2 Brow. Rep. 299. And it is better that the precise terms of the power should be set out, in order that it may appear on the face of the instrument that the forms and circumstances required to attend its execution have been sufficiently complied with—see Dormer *v.* Thurland, 2 P. Wms. 506, Ross *v.* Ewer, 3 Atk. 156. It is however sufficient that such parts only of the power be recited as are requisite to support the appointment intended to be made; in the case of a conveyance to a purchaser in fee, under a simple power of appointment, it might be shortened thus,

"To the use of such person and persons and for such estates, interests, ends, and purposes, and in such manner as the said (*vendor*) by any deed or instrument in writing, to be sealed and delivered by him in the presence of, and attested by two or more credible witnesses, should direct or appoint, and in default of, and until such direction or appointment, to the use of the said (*vendor*) for his life, and after the determination of that estate to the use of him the said (*vendor*) his heirs and assigns for ever."

PURCHASES.

Vendor and Dower-Trustee, (Modern Form.)

thereto; and as to such part or parts of the same messuages, lands, tenements, and hereditaments, and all such estate and estates, interest and interests therein respectively, of which no direction, limitation, or appointment should be effectually made, to the use of the said (*vendor*) and his assigns, during the term of his natural life, with remainder to the use of the said (*trustee*) his executors and administrators, during the life of the said (*vendor*), but in trust for the said (*vendor*) and his assigns, with remainder to the absolute use and behoof of the said (*vendor*) his heirs and assigns for ever. AND WHEREAS the said (*purchaser*) hath contracted with (1) the said (*vendor*) for the absolute purchase of the said lands and hereditaments, [*or* the lands and hereditaments hereinafter described, being part and parcel of the lands and hereditaments comprised in the said in part recited indentures, *as the case may be*], free from incumbrances (other than as hereinafter is mentioned) at the sum of £ ; and hath requested that the same may be conveyed to him in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH (2), that in pursuance and execution of the said agreement, and in consideration of the sum of £ (3) of

Contract for purchase.

WITNESS, in consideration of the purchase money.

(1) If the premises were sold by *public auction*, see *ante*, No. XXXI. p. 4. n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 168. n. (4). Order of court.

(2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98. WITNESS.

(3) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165. n. (6.) *et seq.* Consideration.

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Vendor and Dower-Trustee, (Modern Form.)

lawful current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendor*) in hand well and truly paid by the said *(purchaser)* at or immediately before the sealing and delivery of these presents, the receipt whereof, [and that the same is in full for the absolute purchase of the fee-simple in possession, of the messuages, lands, and hereditaments, intended to be hereinafter appointed, or otherwise assured], the said (*vendor*) doth hereby acknowledge, and [of and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge, the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said messuages, lands, and hereditaments by these presents.] He [*] the said (*vendor*) pursuant to and in exercise of the power (1) or authority given or reserved to him in or by the hereinbefore in part recited indenture of

The vendor limits and appoints.

"Pursuance of power."

(1) Where the vendor has an interest in the subject of the conveyance, as well as a power to appoint, it should be expressly mentioned that the appointment is made in pursuance of his power, lest it should be construed to operate as a conveyance of his interest, and not as an appointment of the use.

Omission of appointment.

But as the covenants for the title in conveyances run with the land for the benefit of subsequent owners, only where there is a privity of estate between the person entering into the covenant and the covenantee, and there being no such privity where the purchaser takes the estate paramount the vendor (as where he takes under the vendor's power to appoint, in which case he takes from the *donee* of the power and not from the *vendor*), some practitioners are accustomed to omit the execution of the power of appointment, and make the vendor convey by grant and release only under his seisin, even though the trustee's concurrence cannot be obtained, preferring that the legal remainder in the trustee during the vendor's life

release, and by virtue thereof, [and of all and every or any other power or powers, authority or authorities, in any wise enabling him hereunto (1)], HATH directed, limited, and appointed (2), and by this deed or instrument in writing, by him sealed and delivered in the presence of and attested by two or more credible persons, whose names are, or are intended to be, hereupon indorsed, as witnesses thereto (3), DOTH, absolutely and irrecoverably direct, limit, and ap-

PURCHASES.

Vendor and Dower-Trustee, (Modern Form.)

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should be left outstanding, rather than that the possible benefit to be derived from the covenants of the former proprietors should be lost (and see *ante*, Vol. I. p. 444. notes.) This practice is not however very generally adopted—nor are there many cases, I apprehend, in which the neglect of this precaution can be important. When, indeed, the trustee joins in the conveyance, there appears to be little or no use in the vendor's exercising the power; and it may perhaps often be preferable to omit the appointment, where the conveyance is made by a vendor who took to uses to bar dower in the present mode to a purchaser taking to the like uses; in which case omit from the asterisk, *ante*, p. 90, to that *post*, p. 95.

"Other powers."

(1) The words within brackets are usually inserted in appointments under a power, in order that the use may pass by virtue of any other power or appointment which may happen to be vested in the appointor, should it fail to take effect as an execution of the particular power expressly intended to be exercised; but when the intent is to exercise such particular power distinctly and exclusively of all others, they should be omitted.

Operative words.

(2) The operative words in the instrument of appointment, should be correspondent with those used in the power, to which also, for the purpose mentioned in a subsequent note, the words "and for further assurance HATH also granted and released," may be added, see *post*, p. 92, n. (1); but see also *post*, p. 93, n. (1).

(3) This is in conformity to the power recited, and in exercising a power of appointment, great care should be taken that the formalities required by the power to attend its execution be

PURCHASES.

Vendor and Dower-Trustee, (Modern Form.)

point, that ALL and singular the messuages, lands, tenements, and hereditaments, hereinafter described, and granted and released, or mentioned, or intended so to be, with their and every of their appurtenances, shall be and remain "unto and to the use and behoof of the said (*purchaser*) his heirs and assigns for ever (1)." AND (2) THIS INDEN-

FURTHER WITNESS. The vendor grants and releases.

strictly complied with—see Kibbet *v.* Lee, Hob. 312, Scrope's Ca. 10 Co. 144. Dormer *v.* Thurland, 2 P. Wms. 506. Hawkins *v.* Kemp, 3 East Rep. 410.

Uses to bar dower.

(1) If the conveyance is to be to uses to bar dower, say, (instead of the words with inverted commas),

"To the uses, upon the trusts, and for the ends, intents, and purposes hereinafter declared or expressed concerning the same (‡)."

Conciseness.

(2) If it be wished that the deed should be very concise, you may omit this separate witnessing part, and add,

"And for the considerations aforesaid, and in consideration of the sum of 10*s.* of like lawful and current money as aforesaid, at the same time in hand paid by the said (*purchaser*) to the said (*vendor's trustee*) the receipt whereof is hereby acknowledged, He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release, and the said (*trustee*), with and by the privity and direction of the said (*vendor*), testified by his sealing and delivering these presents, HATH bargained, sold, and released, and by these presents, DOTH bargain, sell, and release, and by way of conveyance only, and not for or by way of warranty of title, doth also grant and confirm unto the said (*purchaser*) and his heirs. ALL," &c.

And go to the asterisk in the margin, *post*, p. 95.

Limitation to bar dower.

(‡) As an appointment under a power is not a conveyance of the estate itself, but only the limitation or direction of a use,

TURE FURTHER WITNESSETH (1), that for the better, more perfectly, and satisfactorily conveying and

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raised by the deed creating the power, it is necessary, in order to give the appointee the legal estate, that the appointment should be immediately to the person intended to take, for the use vesting in the appointee immediately on the execution of the power, any ulterior limitation would be construed to be a trust or equitable estate only, as an use cannot by the rules of law be limited to arise out of a use. When, therefore, an estate has been taken by the vendor to such uses as he may appoint (as in the case supposed in the above precedent) and he sells to a purchaser who is desirous of taking the conveyance in like manner; the limitation must not be to the purchaser in the first instance, to such uses, &c. as he shall appoint, because under such a limitation, the use would vest in the purchaser himself; the use must therefore be at once carried over to such uses as the purchaser shall appoint, without any previous limitation to the purchaser himself. By this means the statute will execute the use in the purchaser's appointee, who is the first person on whom the limitation rests. But some have questioned whether this power of appointment can be delegated by the donee, to be exercised by another, on the principle that *delegatus non potest delegare;* but this reason applies only to cases of personal trust, confidence, or discretion; and not (as in this case) to an actual beneficial ownership and dominion over the estate; and in all the cases which have determined that a power of appointment cannot be transferred to another, it will be found that the power involved a discretion or personal judgment in the donee. See Ingram *v.* Ingram, 2 Atk. 88. Alexander *v.* Alexander, 2 Vez. 640. Attorney Gen. *v.* Berryman, cited *ib.* 643. Bristow *v.* Ward, 2 Ves. jun. 336, which are the cases nearest in point.

The grant and release.

(1) To guard against failure in the appointment by any defect in the creation, continuance, or exercise of the power, by reason of its previous extinction or suspension, or by an inattention to the circumstances required to be observed in the execution of it, it is usual, where the appointor has a legal interest in, as well as a power over the land, to make him grant and release the estate itself, as well as appoint the use under the

PURCHASES.

Vendor and Donee-Trustee, (Modern Form.)

assuring the said lands and hereditaments unto the said (*purchaser*) and his heirs in the manner aforesaid, [and in consideration of the further sum of 10*s.* of lawful and current money aforesaid, in hand at the same time well and truly paid by the said (*purchaser*) to the said (*vendor and trustee*) respectively, the receipt whereof is

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power, Loach *v.* Wadham, 6 East Rep. 289, 306, and see 10 Ves. jun. 255, and 2 Ca. Op. 32. This, however, can be done, only where in default of appointment, the limitation over is in himself, and as it is merely *ex abundante cautelâ*, and by no means essential, it should seem that a purchaser cannot require this additional security where it would occasion him any material additional expense, as if a fine or recovery would be necessary; and as it has been holden that where a man has an interest, and also a power, and executes an instrument which is equally calculated to operate as a conveyance of his interest as an execution of his power, it will (unless the contrary intent appear) be construed to refer to his interest and not to his power (see Clere's Ca. 6 Co. 18. Brown *v.* Taylor, Cro. Car. 38; and see also Cox *v.* Chamberlain, 4 Ves jun. 631, and Maundrell *v.* Maundrell, 10 *ib.* 257). It seems expedient that such grant, &c. (particularly if the power be not recited) should be made by a separate WITNESSING part, distinctly from that of the appointment, and not, as is frequently done, by blending words of grant, &c. of the estate, with those of the limitation of the use.

Brevity.

But where as much conciseness as possible is desirable, and there does not appear to be occasion for using the precautions just mentioned, this FURTHER WITNESS, &c. may be wholly omitted, and the words "grant and release," be added to those of appointment, as mentioned in the preceding note, p. 92, n. (2).

In some cases, however, it may be proper, as has been before observed, that the APPOINTMENT should be omitted, and the GRANT and RELEASE alone be the form of conveyance, see *ante*, p. 90, n. (1).

PURCHASES.

Vendor and Donee-Trustee, (Modern Form).

hereby acknowledged] [*], He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release and confirm. AND the said (*trustee*) with and by the privity and direction of the said *(vendor)* (testified by his sealing and delivering these presents), HATH bargained, sold, aliened, and released, and by these presents DOTH bargain, sell, alien, and release, and by way of conveyance only, and not by way of warranty, DOTH grant and confirm unto the said *(purchaser)* and his heirs (1), ALL, &c. (2) or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other messuages, lands, tenements and hereditaments (if any) described or comprised in an indenture of bargain and sale for a year, hereinafter particularly referred to; TOGETHER with all [houses (3), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds,

And trustee bargains and sells, &c.

Parcels.

General appurtenances.

(1) If there be an outstanding term to be surrendered, see *ante*, No. XXXI. p. 6, n. (1). Outstanding term.

(2) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104. Parcels.

(3) Adapt the general words to the kind of property to be conveyed, for which purpose, see INDEX *voc.* GENERAL WORDS. General words.

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common of every kind, and all], and all manner of [other] rights, privileges, advantages, appendants, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively, belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (1). ALL which said [messuages, lands, tenements, and] hereditaments, are now in the actual possession of, or legally vested in, the said (*purchaser*) by virtue of a bargain and sale for one year (2), to him thereof made by the said (*vendor and trustee*) (for five shillings consideration) by an indenture bearing or intending to bear date on the day next before the sealing and delivery of these presents, [and by force of the statute made for transferring uses into possession] [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises], and all and singular, the rents, issues, profits, and proceeds thereof; AND all the estate, right, title,

Reference to the bargain and sale for a year.

Exceptions.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Bargain and sale.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

Vendor and Dower-Trustee, (Modern Form).

Grant of title deeds.

interest, use, trust, property, possession, possibility, claim, and demand whatsoever, [both at law and in equity], of him the said (*vendor*), in, to, or upon the said hereditaments and premises, or any part thereof: TOGETHER with all deeds, muniments and writings whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of the said *(vendor)*, his heirs, executors, or administrators, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity (1), and true and attested copies (duly stamped), when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all deeds, muniments, and writings (not being of record), so being or to be in his or their custody, or power, or to be procured as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value; such copies, when first required, to be made and delivered at the expense of the said (*vendor*), his heirs, executors, or administrators; but all future

And copies.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

copies to be made and taken at the expense of the person or persons requiring the same: To HAVE AND TO HOLD (1) the messuages, lands, tenements, hereditaments, and other the premises, hereinbefore and in the said indenture of bargain and sale described, and hereby limited and appointed, and granted and released, or otherwise assured, or intended so to be, [with their and every of their rights, members, appendances, and appurtenances], unto the said *(purchaser)* and his heirs, "to and for the use and behoof of him the said (*purchaser*), his heirs and assigns, for ever (2)." AND the said (*trustee*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare, to and with the said (*purchaser*), his heirs and assigns, that he the said (*trustee*) hath not at any time heretofore, [either alone or together with the said (*vendor*)] made, done, executed, or knowingly occasioned, [nor caused or procured to be made, done, or executed, suffered, or been party or privy to], any act, deed, matter, or thing whatsoever, whereby

To HOLD to the purchaser in fee-simple.

Covenant by the trustee that he has not incumbered.

Habendum.

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Uses to bar dower.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said *(purchaser)* and his heirs, to and for the uses, ends, and purposes hereinafter expressed concerning the same, that is to say."

Add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore limited and appointed, and granted and released, or otherwise assured or intended so to be, or any part thereof, [or their or any or either of their appurtenances, or the use, estate, or interest mentioned or intended to be by these presents limited and appointed, or otherwise assured therein], are, or is, or can or may be impeached, charged, incumbered, or prejudicially affected, [in estate, right, title, or otherwise howsoever]. AND the said *(vendor)*, for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, to and with the said (*purchaser*), his heirs and assigns, in the manner following (1), (that is to say) that the power of direction and appointment so given to or vested in him by the hereinbefore in part recited indenture of release is at the time of the sealing and delivery of these presents in full force and effect, as to and concerning all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore limited and appointed or otherwise

Covenant by vendor that he is lawful owner, &c.

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(1) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Covenants.

The usual covenant of the vendor that he is seised in fee, is frequently inserted in appointments under a power, see 2 Sand. Us. and Tr. and it is not improper where the appointor has an estate in the land as well as a power to appoint the use, as the seisin of the land continues in him until transferred to the appointee by the statute, but otherwise the covenant in the text is more appropriate, and see Doe *v.* Martin, 4 Durnf. and E. 39; Maundrell *v.* Maundrell, 10 Ves jun. 265.

Covenant of seisin.

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

assured or intended so to be, [and in nowise executed, exercised, or otherwise made or become void or extinguished], and that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, suffered, or omitted, by him the said (*vendor*), or the said (*trustee*), to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is the lawful, rightful, and sole beneficial owner and proprietor of all and singular the same hereditaments and premises, as and for an estate of inheritance in fee simple, without the said estate or premises being subject or liable to any manner of trust, condition, power of revocation, or of limiting, appointing, or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever; except, &c. (1) [AND ALSO, that] (for and notwithstanding any such act, deed, matter, or thing as aforesaid, they, the said (*vendor*) and (*trustee*) respectively, now have and hath in themselves and himself, full power, and lawful and absolute right, title, and authority, to limit, appoint, release, and assure, all and singular the said hereditaments and premises [and

And hath right to convey.

Except, &c. (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212, 427.

Leases. If the premises are on lease, see *ante*, No. XXXI. p. 22, n. (2).

Vendor and Dower-Trustee, (Modern Form).

the possession, reversion, and inheritance thereof], "unto and to the use and behoof of the said (*purchaser*) his heirs and assigns," in the manner aforesaid, and according to the true intent and meaning of these presents (1). AND further, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises [with their and every of their rights, members, appendances and appurtenances], and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or

That the purchaser shall quietly enjoy.

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(1) If the conveyance is to be made to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

"To and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

"And further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendances, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes, hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text, marg.* *.

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

any person or persons now or hereafter lawfully, equitably, or rightfully claiming, or entitled to the said hereditaments and premises, or any part thereof, or any estate, right, title, or interest therein or thereto, from, through, under, or in trust for him or them, or their, or any, or either of their acts, means, or defaults (1): AND that free and clear [and clearly and absolutely discharged and exonerated] or by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, directions, appointments, settlements, mortgages, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, dower, remainders or reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed or occasioned, by him the said (*vendor*), or his heirs, or any other person or persons now or hereafter right-

Free from incumbrances.

Lease.

(1) If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

Vendor and Dower-Trustee, (Modern Form).

fully possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity. AND moreover, that he the said (*vendor*) and his heirs, and all and every person and persons, now or at any time hereafter, lawfully or rightfully claiming (1), or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereinbefore limited and appointed, and granted, and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them (2), shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the expense, in all things, of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition], all and every such further and other lawful and reasonable acts,

Covenant for further assurance.

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(1) Or more concisely, Short form.

"Claiming or entitled in anywise as lastly aforesaid."

"Or entitled to any estate, right, title, or interest, in, to, or out of the messuages, &c. hereinbefore limited, appointed, and released, or otherwise assured by any of the means aforesaid," shall, &c.

(2) If the premises are on lease, see *ante*, No. XXXI. p. 27, n. (1). Leases.

PURCHASES.

Vendor and Dower-Trustee, (Modern Form).

deeds, conveyances, matters and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or not enrolled, feoffment, release, confirmation, declaration, limitation or appointment, of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better and more effectually or satisfactorily limiting, appointing, granting, releasing, confirming, and assuring the same hereditaments, and premises [and every or any part or parcel thereof, with their and every of their respective rights, members, appendances, and appurtenances, and the possession, reversion, and inheritance thereof], unto, "and to and for the use, behoof, and benefit of the said (*purchaser*), his heirs and assigns," in such manner and form as he the said (*purchaser*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister) shall advise and require, [and prepare and tender (if the nature thereof permit) for his or their signature or execution; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from

his, her, or their then place or respective places of abode for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively shall be and enure (unless otherwise declared or intended) in corroboration and confirmation of these presents, and of the use, estate, and interest hereby, or intended to be hereby limited and appointed, and granted and released, or otherwise assured (1)], IN WITNESS, &c.

Signed, sealed, and delivered in the presence, &c. (2)

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(1) If there be an outstanding term which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 34. Outstanding term.

If the premises are subject to a rent charge or the like, see Vol. I. p. 212. 427. Rent charge.

If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196; and see also *post*, p. 106, rider (A). Production of deeds.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* Provisoes, &c.

(2) As to the attestation of a deed in execution of a power, see *ante*, Vol. I. Introduction, p. lxxxvii. Attestation.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28). *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.*, also 4 Elem. Conv. 2d edit. p. 88, et seq. Execution, &c.

Vendor and Dower-Trustee, (Modern Form).

(A) Variation *by way of addition to the usual Covenant for production of Title Deeds, where the Vendor took to Uses to bar Dower* (1).

At the conclusion of the usual covenant for production of title deeds. (which see Vol. I. No. XVI. p. 183, and *ante*, No. XXXI. p. 39), add,

AND FURTHER, that if the said (*vendor*) shall at any time or times hereafter, in exercise of the said power or authority to him limited or given, as hereinbefore is mentioned, appoint and convey the other hereditaments to which the said deeds, evidences, and writings relate as aforesaid, or any of them, to any person or persons, and shall deliver to him, her, or them, the said deeds, evidences, and writings, or any of them, then and in such case he the said (*vendor*), his heirs, executors, or administrators, shall and will, at the request of the said (*purchaser*), his heirs or assigns, and the proper costs and charges of the person or persons requiring the same, procure the person or persons to whom the said other hereditaments shall be so appointed and conveyed, and the said deeds, evidences, and writings so delivered as aforesaid, to enter into a covenant with the said (*purchaser*),

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(1) These additional covenants are sometimes made in consequence of the power of appointment given to the vendor on the principle before adverted to (see *ante*, p. 13, n. (1)), namely, that as the estate of the covenantor is not derived from that to which his covenant is attached, such covenant is collateral to and does not run with the estate. In order therefore to secure the fulfilment of the covenants, it is requisite either that they should run with the land, or that others should be given when they cease to be attached to the estate. But as damages only, and not a specific performance, it is apprehended, could be obtained under this any more than the ordinary form, little seems to be gained by the addition.

Vendor and Dower-Trustee, (Modern Form).

his heirs and assigns, similar to the covenant hereinbefore contained for the production, safe custody, and giving copies of the said deeds, evidences, and writings, or such of them as shall be so delivered as aforesaid: And also that if in such appointment of such other hereditaments as aforesaid, a general power of appointment shall be limited to the person or persons to whom the same shall be so appointed, and the said deeds, evidences, and writings, or any of them delivered as aforesaid; then and in such case he the said (*vendor*), his heirs, executors, or administrators, shall and will, at such request, costs, and charges as lastly aforesaid, procure such person or persons to enter into a further covenant with the said (*purchaser*), his heirs and assigns, whereby such person or persons shall promise and agree to procure, from his, her, or their appointees, covenants with the said (*purchaser*), his heirs and assigns, similar to those which the said (*vendor*) hath by these presents covenanted to procure from his appointees, so that all and every the person and persons in whom the said other hereditaments to which the said deeds, evidences, and writings relate as aforesaid, shall for the time being be vested, and who for the time being shall be entitled to have the possession of the said deeds, evidences, and writings, shall be bound by the covenant to or with the said (*purchaser*), his heirs and assigns, for the production of the same, and for the safe custody and giving copies thereof, in the same manner as the said (*vendor*), his heirs, executors, and administrators, is and are by the covenants hereinbefore contained liable thereto.

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

No. XXXV.

Conveyance of Freehold Premises *from Vendor and his Trustee to bar Dower, to a Purchaser and his Trustee for the like Purpose.* Concise Form (1).

Variations *where the Conveyance is to the* Purchaser *alone.*
Also where part of the Premises are Copyhold (2).

THIS INDENTURE of four parts, made the day of in the year, &c. and in the year of our Lord . BETWEEN *(the vendor)* of, &c. of the first part, (*the vendor's trustee*) of, &c. of the second part, (*the purchaser*) of, &c. of the third part, and (*the purchaser's trustee*) of, &c.

Small purchase. (1) The conveyance from a vendor and his trustee to a purchaser and his trustee to uses to bar dower being now so much in use, I have thought it would be a convenience to the practitioner to have presented to him for small purchases, a more concise form than that given in the preceding No. (XXXIV). This form is that (saving a few very trifling alterations) which was used by the late Mr. Watkins, who was one of the most concise, and at the same time one of the most accurate of our modern draftsmen.

Copyholds. (2) It will often be more convenient to have the copyhold part of the premises assured by a separate deed of covenant, in which case see Vol. I. No. XVIII. p. 232, *et seq.*

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

of the fourth part. WHEREAS (1) by certain indentures of lease and release bearing date respectively the and days of , in the year of our Lord , the release being of four parts, and expressed to be made between the (*former vendor*) of, &c. of the first part, the said (*vendor*) of the second part, and the said (*vendor's trustee*) of the third part, the hereditaments hereinafter described, and intended to be by these presents appointed, and released, or otherwise assured, were, for valuable considerations therein mentioned, conveyed or assured to the said (*vendor*) and his heirs, to the use of such person or persons, for such estate and estates, or interest and interests, and to and for such ends, intents, and purposes, and subject to such powers, provisoes, declarations, and agreements as the said (*vendor*) at any time or times, and from time to time by any deed or deeds, or instrument or instruments in writing, to be by him sealed and delivered in the presence of, and to be attested by two or more credible witnesses (or by will as therein mentioned), should direct, limit, or appoint, and in default of, and until such direction, limitation, or appointment, should be made, and when and as any estate or interest directed, appointed, limited, or created, should determine, and in the mean time subject thereto, and as to such part or parts of the same premises,

Recital of conveyance to vendor.

(1) For notes on the different parts of this deed, see those subjoined to No. XXXIV. *ante*, p. 88, *et seq.*

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

and all such estate and interest therein, of which none should be effectually made, to the use of the said (*vendor*) and his assigns during the term of his natural life, and from and after the determination of that estate by forfeiture or otherwise in his lifetime, and in the mean time subject thereto to the use of the said (*vendor's trustee*) and his heirs, during the life of the said (*vendor*). IN TRUST nevertheless, for the sole benefit of the said (*vendor*) and his assigns, and from and after the determination of the estate so limited in use to the said (*vendor's trustee*), to the use of the said (*vendor*), his heirs and assigns for ever. AND

Contract for purchase.

WHEREAS the said (*vendor*) hath agreed with the said (*purchaser*) for the sale to him of the fee simple in possession, free from incumbrances (except as hereinafter mentioned), of and in the hereditaments hereinafter particularly described, (being [part of] the hereditaments comprised in the said indenture of release), for the sum of £ , and the said (*purchaser*) hath requested that the same may be conveyed to him in the manner hereinafter expressed. NOW THIS

Witness, the vendor limits, &c.

INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the said United Kingdom of Great Britain and Ireland, current in Great Britain, paid by the said (*purchaser*) immediately before the execution of these presents to the said (*vendor*), who doth hereby acknowledge the receipt thereof, and doth by these presents release and for ever discharge the said (*purchaser*),

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

his heirs, executors, and administrators from the same, HE the said (*vendor*) in pursuance and in complete execution of the power so given to him by the said recited indenture of release as aforesaid, and of every other power him in anywise enabling thereto, DOTH by these presents irrevocably direct, limit, and appoint, ALL that messuage, &c. to be henceforth to the use of the said (*purchaser*) and his assigns, (1) for and during the term of his natural life, and from and immediately after the determination of that estate by any means in his lifetime, to the use of the said (*purchaser's trustee*) and his heirs [*or* executors and administrators] during the natural life of the said (*purchaser*), in trust for the said (*purchaser*) and his assigns: And from and immediately after the determination of the estate so limited in use to the said (*purchaser's trustee*) during the natural life of the said (*purchaser*) as aforesaid, to the use of the right heirs of the said (*purchaser*) for ever. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, and of the further sum of ten shillings of like money, at the same time paid by the said (*purchaser*) to the said (*vendor*), the receipt whereof is hereby also acknowledged, the said (*vendor*), by way of further assurance, DOTH by these presents grant, bargain, sell, and release, AND the said (*vendor's trustee*), by the direction of the said (*vendor*), DOTH hereby

To uses to bar dower.

FURTHER WITNESS, vendor grants and releases.

And vendor's trustee bargains, &c.

(1) If the conveyance is not intended to be made to uses to bar dower, say,

Purchaser and his heirs.

"Unto, and to and for the use and behoof of the said (*purchaser*) his heirs and assigns for ever."

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

bargain, sell, and release unto the said (*purchaser*) and his heirs, ALL that messuage, &c. &c. (and which said messuage and hereditaments are now in the possession of the said (*purchaser*),

Parcels.

by virtue of a bargain and sale to him thereof, made by the said (*vendor*) in consideration of five shillings, by indenture bearing date the day next before the day of the date of these presents for one year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute for transferring uses in

General words.

possession) and also all buildings, ways, waters, water-courses, timber and other trees, fences, easements, rights, members, and appurtenances to the said hereditaments, belonging or appertaining, or reputed, deemed, or taken to belong or appertain thereto; all which said hereditaments are now in the occupation of A. B. by virtue of an inden-

Reversion, &c.

ture of lease, bearing date, &c. and the reversion and reversions, remainder and remainders, and rents, issues, and profits thereof; and all the estate, right, title, and interest, use, trust, property, claim, and demand whatsoever, both at law and in equity, of them the said (*vendor*) and (*vendor's trustee*) and of each of them, of, in, to, or out of the same or

To HOLD to purchaser and his heirs.

any part thereof. TO HAVE AND TO HOLD the said messuage, &c. and all other the hereditaments and premises hereinbefore described, and hereby released or otherwise assured or intended so to be, with the appurtenances unto the said (*purchaser*)

To uses to bar dower.

and his heirs, (1) to the use of the said (*purchaser*) and his assigns, during the term of his natural life,

(1) See *ante*, p. 111, n. (1).

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

And from and immediately after the determination of that estate by any means in his lifetime to the use of the said (*purchaser's trustee*) and his heirs [*or* executors and administrators] during the natural life of the said (*purchaser*), in trust for the said (*purchaser*) and his assigns; and from and immediately after the determination of the estate so limited in use to the said (*purchaser's trustee*) and his heirs during the natural life of the said (*purchaser*) as aforesaid, to the use of the right heirs of the said (*purchaser*) for ever (1). And the said (*vendor's trustee*) for himself, his heirs, executors, and administrators, doth hereby covenant with the said (*purchaser*) his heirs and assigns, that he the said (*vendor's trustee*) hath not made, done, executed, or knowingly suffered any act, deed, matter, or thing whatsoever, whereby or by means whereof the hereditaments and premises hereby released or otherwise assured or intended so to be, or any part thereof, are, is, or can be impeached, charged, incumbered, or prejudicially affected in any way whatever, or these presents be prevented from taking effect according to the true intent and meaning of them (2). And

Covenant from vendor's trustee that he has not incumbered.

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(1) See other forms of limitations to bar dower, Vol. I. No. XXVIII. p. 443, notes; and *ante*, No. XXXI. p. 31.

Forms to bar dower.

(2) If any part of the premises be copyhold, add here a covenant by the vendor to surrender them, as,

Part copyhold.

"AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the sum of £ of lawful money of the said United Kingdom current as aforesaid, paid by the said (*purchaser*) immediately before the execution of these pre-

WITNESS.

Vendor covenants to surrender the copyholds.

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

Covenant from vendor that he and trustee are seised, &c.

the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant with the said (*purchaser*) his heirs and assigns, that (notwithstanding any act, deed, matter, or thing whatsoever, made, done, or executed, or knowingly suffered to be made, done, or executed to the

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sents to the said (*vendor*) for the purchase of the hereditaments next hereinafter described, and who doth hereby acknowledge the receipt thereof, and doth by these presents release and for ever discharge the said (*purchaser*) his heirs, executors, and administrators from the same. He the said (*vendor*) for himself, his heirs, executors, and administrators doth hereby covenant with the said (*purchaser*) his heirs and assigns, that he the said (*vendor*) or his heirs will and shall at his or their own expense, and at or before the next general Court Baron or Customary Court to be holden in and for the manor of in the county of well and effectually surrender or cause or procure to be so surrendered into the hands of the lord or lords, lady or ladies of the said manor according to the custom thereof, to the use of the said (*purchaser*) his heirs and assigns for ever, (by such descriptions as shall be sufficient to comprise and ascertain the same). All that messuage or dwelling-house, with the barn, stables, chaise-house, gardens, orchard, and appurtenants to the same belonging. And all those three fields or inclosures called, &c. All which premises are now in the occupation of, &c. and are situated, and being at and within and holden of the said manor; together with all buildings, commons, right of commonage, liberties, easements, rights, members, and appurtenants to the same messuages and fields or enclosures, and each of them respectively belonging or appertaining, or deemed or reputed to belong or appertain to the same, or to any or either of them. And also all the estate, right, title, interest, property, claim, and demand whatsoever of him the said (*vendor*), of, in, to, out of, or upon the said messuages and fields or enclosures respectively."

contrary by the said (*vendor*)), they the said (*vendor*) and (*trustee*) are now seised, or one of them is seised of a good, sure, lawful, absolute, and indefeasible estate of inheritance in fee simple in possession, of and in the hereditaments and premises hereby directed, limited, and appointed, and released, or otherwise assured or intended so to be, and every part of the same, with the appurtenants (1), without there being any condition, trust, power of revocation or of limitation, or any other power, restraint, cause, matter, or thing whatsoever, to alter, charge, defeat, revoke, lessen, incumber, or determine the same estate or any part thereof, save as appears by these presents; and also that notwithstanding any such act, deed, matter, or thing as aforesaid, the said (*vendor*) and (*vendor's trustee*) now have in themselves, or one of them hath in himself good right, full power, and lawful authority by these presents to direct, limit, appoint, grant, release, or otherwise assure the hereditaments and premises hereby directed, limited, appointed, released (2), or otherwise assured or intended so to be, and every part of the same, with the appurtenants, unto the said (*pur-*

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

And have right to convey.

(1) If part of the premises be copyhold, add, Part copyhold.

"But as to such parts of the said hereditaments and premises as are copyhold, at the will of the lord, according to the custom of the aforesaid manor."

(2) If part copyhold, add, Part copyhold.

"And agreed to be surrendered,"

after the word "released," throughout the covenants.

PURCHASES. *chaser*) and his heirs, to the uses and in the manner aforesaid, and according to the true intent and meaning of these presents. AND also that it shall be lawful for the said (*purchaser*), his heirs and assigns, from time to time and at all times for ever hereafter peaceably and quietly to enter into and upon, and have, hold, use, occupy, possess, and enjoy the hereditaments and premises hereby directed, limited, appointed, released or otherwise assured, or intended so to be, and every part of the same, with the appurtenants, and to receive and take the rents, issues, and profits thereof for his and their own use, without any lawful let, suit, trouble, eviction, or interruption whatsoever, of, from, or by the said (*vendor*) or any person or persons whomsoever, having or lawfully claiming or to claim any estate, right, title, term, trust, charge, or interest at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any of them or any part thereof, by, from, through, under, or in trust for him. AND free and clear, or freely, clearly, and absolutely acquitted, exonerated, and discharged, or by the said (*vendor*) his heirs, executors, or administrators, well and sufficiently defended, saved harmless, and kept indemnified from and against all former and other gifts, grants, feoffments, leases, bargains, sales, mortgages, jointures, right and title of dower, uses, trusts, wills, entails, annuities, legacies, rents, arrears of rents, statutes, recognizances, judgments, executions, extents, suits, decrees, sequestrations, estates, titles, liens,

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

Covenant for quiet enjoyment.

Free from incumbrances.

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

charges, and incumbrances whatsoever, at any time or times heretofore or to be at any time hereafter had, made, done, committed, executed, given, occasioned, or knowingly suffered by the said (*vendor*) or any person or persons claiming or to claim by, from, through, under, or in trust for him, or by or through his acts, means, consent, default, privity, or procurement (the rents, and services, if any, due to the lord or lords, of the fee or fees, of whom the said premises are holden, and the aforesaid indenture of lease only excepted) (1). AND also that the said (*vendor*) and his heirs, and every other person having or rightfully claiming or to claim any estate, right, title, trust, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the hereditaments and premises, hereby directed, limited, appointed, released, or otherwise assured, or intended so to be, or any part thereof, by, from, under, or in trust for him, will and shall from time to time, and at all times for ever hereafter, upon every reasonable request, and at the costs and charges in all things of the said (*vendor*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect every such further or other lawful and reasonable act, deed, conveyance, and assurance in the law whatsoever, for the further, better, and more absolutely or satisfactorily directing, limiting, appointing, granting, releasing, confirming, or otherwise assuring the said hereditaments and premises,

And for further assurance.

(1) Or as *ante*, No. XXXI. p. 27, notes.

PURCHASES.

Vendor and Dower-Trustee to Purchaser and Dower-Trustee.

and every or any part of the same, with the appurtenants, unto and to the use of the said (*purchaser*) his heirs and assigns for ever, or as he or they shall direct, conformably to the true intent and meaning of these presents, as by him the said (*purchaser*) his heirs or assigns, or his or their counsel in the law shall be respectively advised and required, so as such further assurances, or any of them, do or shall not contain in them or imply any other or more general covenant or warranty than on the part of the person or persons who shall be required to make or execute the same, and only against the acts, deeds, and defaults of himself, herself, or themselves respectively, and his, her, or their heirs, executors, administrators, and assigns. And so as the person or persons who shall be required to do such acts or make such further assurances, shall not for that purpose be compelled to go from his, her, or their usual place or places of abode. IN WITNESS, &c.

Signed, sealed, &c. (1).

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(1) As to the mode of executing and attesting a deed in execution of an appointment, see Vol. I. INTRODUCTION, p. lxxxvii.

No. XXXVI.

Conveyance by a Vendor *and* Mortgagee *in* Fee *to a Purchaser* (1).

Variations *where a Part only of the mortgaged Premises are sold.*

Where the Mortgagee *is himself the Purchaser.*

Where the Conveyance is from the Heir at Law, *&c. of the Mortgagor.*

Where such Heir *is an Infant.*

Where the Conveyance is taken by the Purchaser *to Uses to bar Dower.*

THIS INDENTURE of parts, made the day of , in the year of the reign,

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(1) As it is necessary, in order to make the covenants for the title run with the land, that there should be a privity of estate between the vendor and purchaser, Webb *v.* Russell, 3 Durnf. and East. 393, 678. 1 Hen. Blac. 562, Roach *v.* Woodham, 6 East. Rep. 289, a mortgagor is sometimes required to procure a reconveyance of the fee to himself (by deed dated the day preceding) before he conveys to a purchaser, because as there is no legal privity between the purchaser and the vendor, during the subsistence of the mortgagee's estate, it might be contended that the covenants for the title were covenants in gross, and would not entitle the purchaser to avail himself of them, otherwise than by making use of the name of the vendor; but as, on the other hand, judgments and other incumbrances of the vendor, or his wife's title to dower, might attach on the estate, by suffering it to vest in him previously to the conveyance to the purchaser, it is more general to take the conveyance

Previous reconveyance to the mortgagor may be required.

PURCHASES. &c. and in the year of our Lord . BE-

Vendor and Mortgagee in Fee.

TWEEN (*the mortgagee*) of, &c. of the first part, (*the vendor*) (1) of, &c. of the second part, and (*the purchaser*) of, &c. of the third part (2). WHEREAS (3) the said (*vendor*) being seised in his demesne, as of fee, of the messuages, lands, and hereditaments hereinafter described, by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release

Recital of a mortgage in fee.

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immediately from the mortgagee. The variations subjoined may perhaps however be considered as obviating the objection.

Wife of vendor.

(1) Although the vendor be married, yet as a wife is not entitled to dower out of an equity of redemption, she need not be a party unless the mortgage was made subsequent to his marriage, and no fine was levied on the execution of the mortgage, or the declaration of the uses subject to the mortgage was to the husband in fee, and the conveyance to the purchaser be before forfeiture, in which case a fine will be necessary, see a full and instructive note on this subject, Co. Lit. 208, n. (1).

Wife of purchaser.

(2) If the purchaser be married, and his wife dowable, make a trustee party, as,

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2, n. (1).

Heir, &c. of mortgagee.

If the conveyance be from the heir at law, or other representative of the mortgagee, make,

"*(The heir at law (or devisee) of the mortgagee)* of the first part, *(his executors or administrators)* of the second part, (*the vendor*) of the third part, and (*the purchaser*) of the fourth part."

Mortgagee an infant.

If the heir at law of the mortgagee be an infant, see *post*, rider (B) p. 143.

Recitals.

(3) As to recitals, see Vol. I. p. 162, in notes; also 4 Elem. Conv. 2d edit. p. 107; and for the form of recitals of different species of deeds, &c. see INDEX *voc.* RECITALS.

being of parts, and made or expressed to be made between, &c. the said (*vendor*) in consideration of the sum of £ then advanced to him by the said (*mortgagee*) by way of loan, and at interest after the rate therein mentioned, conveyed and assured the said messuages, lands, and hereditaments, unto and to the use of the said (*mortgagee*), his heirs and assigns, subject nevertheless to a proviso in the said indenture of release contained, that if the said (*vendor*), his heirs, executors, or administrators, [or any person or persons on his or their behalf], should pay, [or cause to be paid], unto the said (*mortgagee*), his executors, administrators, or assigns, the said sum of £ with interest for the same after the rate, at the time, and in the manner therein appointed for payment thereof, he the said (*mortgagee*), his heirs or assigns, would, at the expense of the said (*vendor*), his heirs, executors, administrators, or assigns, convey and assure all or any part of the said mortgaged premises, for all his and their estate and interest therein under or by virtue of the said indenture, unto and to the use of or for the said (*vendor*), his heirs or assigns, or unto such other person or persons, and for such estates and interests as he or they should in writing under his or their hand or respective hands, direct or appoint in that behalf (1). AND WHEREAS de-

PURCHASES.

Vendor and Mortgagee in Fee.

(1) If the mortgage has been previously paid off, recite, "AND WHEREAS, the said sum of £ and all

Mortgage previously paid off.

PURCHASES.

Vendor and Mortgagee in Fee.

Default made.

fault was made in payment of the said sum of £ at the time in the said in part recited indenture mentioned for payment of the same, whereby the estate and interest of the said (*mortgagee*) in the said premises, became absolute at law, and redeemable only in equity (1). AND WHEREAS

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interest due in respect thereof, have been fully paid and satisfied, previously to the sealing and delivery of these presents, viz. on or about the day of , but no reconveyance has yet been executed of the said premises by the said (*mortgagee*)."

Heir, &c. of mortgagee.

(1) If the conveyance be by the representatives of the mortgagee, recite the will or intestacy and death of the mortgagee, as,

"And whereas the said (*mortgagee*) departed this life on or about the day of intestate, leaving the said (*heir*), his eldest son and heir at law, and letters of administration to his estate and effects were, soon after his decease, granted to the said (*administrator*) by the Prerogative Court of ."

And if such heir be an infant, see *post*, rider (B), p. 143. Or,

"Having first duly made and published his last will and testament in writing, bearing date on or about the day of , and appointed the said (*executors*) executors of his said will, who, soon after his decease, duly proved the same in the Prerogative Court of ,"

Or,

"Whereby he gave and devised all and every the lands and hereditaments whereof he was seised or held by way of mortgage with their appurtenances, unto A. B. of, &c. and his heirs, upon trust and to the intent, and he did thereby direct that he the said A. B. or his heirs should, on payment unto the executors thereafter in his said will

PURCHASES.

Vendor and Mortgagee in Fee.

there is now owing to the said (*mortgagee*) upon the said in part recited security, the said principal sum of £ together with the sum of £ for interest up to this day, making together the sum of £ (*or* the said principal sum of £ and no more, all interest for the same having been paid up to the date hereof). AND WHEREAS the said (*purchaser*) hath contracted with (1) the said (*vendor*) for the absolute purchase of the said messuages, lands, and hereditaments, [*or* such part of the said messuages, &c. as are hereinafter described], free from all incumbrances (except as hereinafter is mentioned), for the sum of £ out of which it has been agreed that the said sum of £ shall be paid to the said (*mortgagee*) in discharge of the said mortgage, who has agreed to accept thereof, and execute such conveyance of his estate and interest in the said hereditaments as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH (2), that in pursuance of the said agreement, and for and in consideration of

Contract for purchase.

WITNESS, in consideration of the sum due on the mortgage.

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named, of all monies due thereon, convey, release and assure the said hereditaments unto such person or persons, who for the time being should or might be entitled to redeem the same."

(1) If the premises were sold by auction, see *ante*, No. XXXI. p. 4, n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4). Order of court.

(2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123, *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.* WITNESS.

PURCHASES.

Vendor and Mortgagee in Fee.

the sum of £ (1) of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said *(mortgagee)* in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents (2), at the

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Mortgage before paid off.

(1) If the mortgage has been previously paid off, either by the mortgagor or by his executors, say,

"In consideration of the said sum of £ and all interest due in respect thereof, having been so fully paid and satisfied as hereinbefore is mentioned, the receipt whereof, &c." *as above.*

Consideration.

(2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6), *et seq.*

Heir, &c. of mortgagee.

If the conveyance be made by the heir, &c. of the mortgagee, say,

"In consideration of the said sum of £ in hand paid, &c. to the said *(executors or administrators of mortgagee)*, at the request, &c. of the said (*vendor*), testified, &c. and of ten shillings of, &c. to the said *(heir of mortgagee)*. He the said *(heir)*, by the direction of the said (*executors or administrators*) and of the said (*vendor*), testified, &c. HATH bargained, &c. and by these presents DOTH bargain, &c. and the said (*executors or administrators*) HAVE remised, released, and quit claimed, and by these presents Do, &c. and the said (*vendor*), in consideration of the residue of the purchase money, grants, &c." *as in text, post,* p. 125.

Part of premises sold.

If a part only of the mortgaged premises be sold, and a part only of the mortgage be paid off, say,

"In consideration of, &c. being part of the said sum of £ so now due, &c."

In which case an indorsement should be made on the mort-

request and by the direction, and for and on behalf of the said (*vendor*) testified by his being a party to, and sealing and delivering these presents, the receipt of which said sum of £ [and that the same is in full payment and satisfaction of all principal, interest, and other monies, due upon, or in respect of the said hereinbefore in part recited mortgage security], he the said (*mortgagee*) doth hereby expressly acknowledge, [and of and from the same doth fully and absolutely acquit, release, exonerate, and for ever discharge, the said (*purchaser*) and also the said (*vendor*) and their respective heirs, executors, and administrators, and the said mortgaged premises, by these presents, He the said (*mortgagee*) (1) at the request and by the direction and appointment of the said (*vendor*) testified as aforesaid, HATH granted (2),

PURCHASES.

Vendor and Mortgagee in Fee.

The mortgagee grants, &c. the mortgaged premises.

gage deed and counterpart, acknowledging part of the money to be paid and part of the premises released, which will prevent the mortgagee or his representatives assigning the whole mortgage, and see WILDE'S SUP. *voc.* RELEASE.

(1) If the mortgagee himself be the purchaser, omit this, and proceed to the next witnessing part.

Mortgagee purchaser.

(2) The word "grant" is frequently omitted in the conveyance of the estate by the mortgagee, owing, I presume, to the notion which formerly obtained, that this word implied a warranty for the title, &c.; but as that doctrine is now, I believe, pretty generally, and I think justly, discountenanced, if not wholly exploded, where the estate is of inheritance or of freehold, (see Co. Lit. 384, n. (1). 4 Cru. Dig. 52;) and as it seems proper that the mortgagee should convey by words as comprehensive as those by which he took the estate, I have here

"Grant."

PURCHASES. *Vendor and Mortgagee in Fee.*

bargained (1), sold, released, and quitted claim, and by these presents DOTH grant, bargain, sell, release, and quit claim (2) unto the said (*purchaser*)

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retained it. The grant may, however, if more satisfactory to the mortgagee, be qualified thus,

"He the said mortgagee, at the request, &c. and by way of conveyance only, and not for or by way of warranty of title, HATH, &c."

Copyholds. (1) If the premises are copyhold, see Vol. I. No. XVIII. If part only are copyhold, see *ib.* No. XX.

Concise form. (2) The mortgagor and mortgagee, after forfeiture, possess distinct interests, the mortgagee having a *legal*, and the mortgagor only an *equitable* estate in the land; the proper mode of passing their respective interests is, therefore, to make each of them convey his particular interest by distinct witnessing parts. The mortgagee first conveying his *legal* estate in consideration of receiving his principal and interest, and then the mortgagor his *equitable* interest, in consideration of the residue of the purchase money, as in the text. It is not unusual, however, for the sake of conciseness, for the mortgagee and mortgagor to be made to pass their respective interests in a more compressed manner, thus,

"AND for the considerations aforesaid, and in consideration of the further sum of £ of like lawful and current money, being the residue of the said purchase money or sum of £ at the same time well and truly paid by the said (*purchaser*) to the said (*vendor*) (the receipt of which said sum of £ and the payment of which said sum of £ to the said *(mortgagee)* at and by such request and direction as aforesaid, [and that the same sums, making together the sum of £ are in full for the absolute purchase of the fee simple and inheritance, in possession, of the messuages, lands, tenements, and hereditaments hereinafter granted and released, or intended so to be (discharged of all liens and claims for or on account of the said sum of £ or of the interest

and his heirs, ALL, &c. (1). AND ALL other the messuages, or tenements, lands, and hereditaments, PURCHASES. *Vendor and Mortgagee in Fee.*

thereof, or otherwise, in respect of the said mortgage)] the said (*vendor*) doth hereby acknowledge), [and of and from the same, and every part thereof, doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said messuages, lands, tenements, and hereditaments, by these pre-

(1) Insert here an accurate description of the premises from the mortgage deed. As to the mode of describing parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104. Parcels.

But sometimes, instead of introducing a description of the premises here, they are referred to by a general description of

"The several messuages, lands, &c. hereinafter particularly described, and mentioned or intended to be by these presents granted and released, or otherwise assured."

But as by inserting them here, the purchaser cannot fail to take from the mortgagee all the lands, &c. which were demised to him, and the mortgagee is in no danger of conveying or assuming to convey more, this seems to be in general the more safe, and better way for both parties; but the propriety of this or the other mode, will often depend upon particular circumstances; as where, for example, a part only of the mortgaged premises are proposed to be conveyed to the purchaser; in this case, to prevent the necessity of repeating the description of the lands purchased, it may be proper to postpone such description to the operative part of the deed; with the addition of,

"Being part and parcel of the messuages, &c. comprised in the hereinbefore in part recited indenture of release by way of mortgage of the day of ." Part of premises sold.

And omit the subsequent words, "AND all other," &c.

PURCHASES: (if any) so granted and released, or otherwise conveyed to him the said *(mortgagee)* in and by the

Vendor and Mortgagee in Fee.

sents, as he the said (*vendor*), HATH granted, bargained, sold, aliened, and released, ratified and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL, &c."

Or even more concisely, thus,

"NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said *(mortgagee)* in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, in full of all principal and interest due to the said *(mortgagee)* upon his said in part recited mortgage, the receipt whereof is hereby acknowledged, and also for and in consideration of the further sum of £ residue of the said purchase money, to the said (*vendor*) in hand at the same time well and truly paid by the said (*purchaser*), the receipt of which said sum of £ and that the same, together with the said sum of £ [hereinbefore expressed to have been paid to the said *(mortgagee)* as aforesaid], is in full for the complete and absolute purchase of the said hereditaments and premises, the said (*vendor*) doth hereby acknowledge, and thereof [and of and from every part and parcel thereof] doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, for ever by these presents, he the said *(mortgagee)* at the request, and by the direction and appointment of the said (*vendor*) testified by his being made a party to, and sealing and delivering these presents, and as to and concerning such estate and interest, and such parts of the premises hereinafter described, as are or is comprised in the said in part recited indenture

said hereinbefore in part recited indentures of lease and release, and all the estate, right, title, and interest whatsoever, of him the said (*mortgagee*) therein or thereto, under or by virtue of the same in part recited indentures, or either of them. TOGETHER also with the said indentures, and all and every other the deeds, writings, and evidences of title whatsoever, in any wise relating to the same premises, or any part thereof, which at, or at any time after, the sealing and delivery thereof, were or was delivered unto him the said (*mortgagee*), his counsel, solicitor, or agent, or which now are or is in the possession or power of the said (*mortgagee*) as mortgagee of the said premises. AND THIS INDENTURE FURTHER WITNESSETH (1), that for the considerations aforesaid, and for

PURCHASES.

Vendor and Mortgagee in Fee.

FURTHER WITNESS, in consideration of residue of purchase money.

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of release, HATH granted, bargained, sold, and released, and by these presents DOTH grant, bargain, sell, and release, and the said (*vendor*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and to his heirs and assigns, ALL, &c." *as in the text.*

And where the estate is small, and the title clear, the above mode is allowable; but as by this arrangement of the words, the mortgagee is, in grammatical construction, made to convey, as well in consideration of the money paid to the vendor, with which he has no concern, as of that paid to himself; and also the estate and interest of the mortgagor as well as his own under the mortgage, the form given in the text appears to be preferable.

(1) If a part only of the mortgage money be paid off, this witnessing part will of course be omitted.

Part of mortgage paid.

PURCHASES.

Vendor and Mortgagee in Fee.

and in consideration of the further sum of £ of such lawful and current money as aforesaid, at the time of the sealing and delivering of these presents well and truly paid by the said (*purchaser*) to the said (*vendor*), being the residue and in full of the said purchase money or sum of £ the receipt whereof, and that the same is so in full as aforesaid, the said (*vendor*) doth hereby expressly acknowledge, [and of and from the same and every part thereof, doth acquit, release, exonerate, and discharge the said (*purchaser*), his heirs, executors, and administrators, and also the said premises, by these presents.]

The vendor grants, &c.

He the said (*vendor*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto him the

The aforesaid premises,

said (*purchaser*), his heirs and assigns, ALL and singular the several messuages, or tenements, lands, and hereditaments, hereinbefore described, and granted and released to the said (*purchaser*) by the said (*mortgagee*), as hereinbefore is expressed, or intended so to be, [or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or here-

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Mortgagee purchaser.

And if the mortgagee be the purchaser, this part of the deed may be altered into a simple release of the mortgagee's equity of redemption, as in Vol. I. No. XXV. p. 361; and in that case, if it be wished by the mortgagee, the mortgage money may be assigned to a trustee to be kept as personal estate, for the purposes to be directed by his will or otherwise, see *post*, No. XXXVII. rider (A).

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tofore were or was situated, tenanted, called, known, or described, and also all other the messuages, lands, tenements, and hereditaments (if any) comprised in a certain indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses (1), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other] rights, privileges, easements, appendances, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments and premises, or any part thereof, belonging, or in any wise appertaining, [or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (2). (ALL which said messuages, lands, tenements, and hereditaments, are now in the possession of or legally vested in the said (*purchaser*) by virtue of bargain and sale (3) for a year to him thereof

with the appurtenances.

Bargain and sale for a year.

(1) Adapt the general words to the nature of the property, for which purpose see INDEX *voc.* GENERAL WORDS. General words.

(2) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

(3) See the form of the bargain and sale for a year, Vol. I. No. XIII. p. 110; and No. XIV. p. 117. Lease for year.

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made by the said (*mortgagee and vendor*) for five shillings consideration) by indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, and proceeds thereof. And all the estate, right, title, interest, use, trust, property, possession, possibility, equity, and right of redemption, claim and demand whatsoever, of him the said (*vendor*) in, to, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds (1), muniments, and writings whatsoever, in any wise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of him the said (*vendor*), his heirs, executors, or administrators, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies duly stamped, when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all deeds, muniments, and writings, not being of record, so in his or

Estate, &c.

Grant of title deeds.

And copies.

Part of mortgage paid.

(1) If a part only of the mortgage money be paid off, this grant of title deeds must be omitted, unless there be separate title deeds belonging to those sold, in which case say,

"All, &c. except only the hereinbefore in part recited indenture, by way of mortgage, of the day of ."

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their custody or power, or which can or may be procured as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies when first required to be made and delivered at the expense of the said (*vendor*), his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same. To HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, and premises, hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, and appurtenances, " unto the said (*purchaser*) his heirs and assigns (3), to and for the use and behoof of him the said (*purchaser*), his heirs and assigns for ever," wholly and absolutely freed,

To HOLD to the purchaser in fee-simple.

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(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

" And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

(3) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

" Unto the said (*purchaser*) and his heirs, to, and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

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exonerated, and discharged, of and from the said sum of £ and all interest and other monies whatsoever, now or heretofore payable or due for or in respect thereof, and of and from all other liens, charges, claims, and demands, whatsoever, as well legal as equitable, of, from, or by the said (*mortgagee*), his heirs, executors, administrators, or assigns, upon or concerning the same respectively, or otherwise on account or by reason of the said in part recited mortgage (1).

Covenant by the mortgagee that he has not incumbered.

AND the said (*mortgagee*) (2) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*mortgagee*) hath not at any time heretofore, [either alone or together with the said (*vendor*) or any other person or persons], made, done, executed, or knowingly occasioned, suffered or omitted, [nor caused or procured to be made, done, committed, executed, suffered, or omitted, nor been party or privy to] any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, or any

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Mortgagee purchaser.

(1) If the mortgagee be the purchaser, omit this and the subsequent covenants, and insert in their stead a covenant by the mortgagor that he has not released his equity of redemption, as *ante*, Vol. I. No. XXV. p. 367.

Copyhold.

(2) If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here. See the form of such covenant, No. XX. p. 266.

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part thereof, or their, or any of their appurtenances, or the estate or interest mentioned or intended to be by these presents granted, released, or otherwise assured therein, are, is, or can, or may be impeached, charged, incumbered, or prejudicially affected in estate, right, title, value, or otherwise howsoever. AND the said (*vendor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant (1), and declare, with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter, or thing, whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered, by him the said (*vendor*) (2) [or any trustees or trustee for him], to the contrary, they the said (*vendor*) and (*mortgagee*) at the time of the sealing and delivery of these presents, now are or one of them is, lawfully and rightfully seised in their or his demesne or respective demesnes, as of fee,

Covenant by vendor that he and mortgagee are seised in fee.

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(1) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123. Covenants.

(2) If vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement; add, Vendor entitled by devise, &c.

"Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

If by descent, add, or by descent.

"Or any of his ancestors,"

And see Vol. I. No. XV. p. 141, n. (39.); and No. XVI. p. 178, *et seq.* in notes.

PURCHASES. in their or his own right or respective rights, and to their or his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended so to be, as of, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, otherwise than as is hereinbefore particularly set forth or recited, except, &c. (1).

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And have a right to convey.

AND also that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*vendor*) and (*mortgagee*) now have in themselves, or one of them hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto "and to the use and behoof of" (2) the said (*pur-*

Except, &c. (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Leases. If the premises be subject to any subsisting lease or leases, see *ante*, No. XXXI. p. 22, n. (2).

Uses to bar dower. (2) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the

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That the purchaser shall quietly enjoy.

chaser) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, claim, or demand whatsoever, by or from the said (*vendor*) and (*mortgagee*) or either of them, or either of their heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in

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uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text*, marg. *.

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Free from incumbrance.

trust for him, them, or any or either of them (1). AND that free and clear and clearly and absolutely discharged and exonerated, or by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually protected, and indemnified, from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, mortgages, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, and amerciaments, and all and singular other] estates, rights, titles, interests, charges, liens, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time hereafter shall or may be made, executed, created, occasioned, or knowingly suffered by the said (*vendor*) or (*mortgagee*) or either of them, or any person or persons now or hereafter rightfully claiming, or possessing any legal or equitable estate, right, title, charge, or interest, from, through, under, or in trust for him,

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Vendor entitled by devise, &c.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 135. n. (1).

Leases.

If the premises be on lease, see as referred to, *ante*, p. 136, n. (1).

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them, or any or either of them, or by or through his, their, or any or either of their acts, means, or defaults. AND moreover, that he the said (*vendor*) and his heirs, and all and every person and persons, now or at any time hereafter, rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, in, to, out of, or relating to the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, or by or through his acts, means, or defaults(1), shall and will from time to time, and at all times hereafter, upon the request, and at the expense and costs of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected,] with all proper expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters and things whatsoever, [whether by feoffment, fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, limitation or declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, and more effectually, fully, and absolutely, or satisfactorily granting, releasing, conveying, confirming, and

(1) See *ante*, p. 135, n. (1); 136, n. (1).

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assuring the said messuages, lands, tenements, hereditaments and premises, and every or any part thereof, and the possession, reversion, and inheritance of the same, unto, and to and for the use and behoof of the said *(purchaser)* his heirs and assigns, in such manner and form as he or they, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require (1). IN WITNESS, &c.

Full form. (1) If there be no wish that the deed should be in a form particularly concise, see and add as *ante*, No. XXXI. p. 29. marg. *.

Leases. Here may be added, if thought requisite, a covenant by the purchaser that he will confirm leases made by the mortgagor since the mortgage, and without the concurrence of the mortgagee, which see *post*, rider (A). p. 141.

Outstanding term. If there be an outstanding term, which is to be assigned or surrendered, see *ante*, No. XXXI. p. 24, n. (1).

Rent charge. If the premises are subject to a rent-charge or the like, see Vol. I. p. 212. 427.

Production of deeds. If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp. *** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c. As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

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(A) Variation *to the preceding Precedent (or to that of the Conveyance of an Equity of Redemption to the Mortgagee, see* ante, *Vol. I. No. XXV. where the Premises have been leased by the Mortgagor since the Mortgage, and without the concurrence of the Mortgagee.*

In order to prevent, in the case above supposed, any apprehension on the part of the purchaser, that he may be led into a confirmation of leases concealed from him, recite all subsisting leases granted subsequently to the mortgage, and the covenants contained in them respectively on the part of the lessor, for quiet enjoyment by the lessees on payment of rent and performance of covenants; then proceed,

"AND WHEREAS it has been agreed between the said (*purchaser*) and (*vendor*), that the said (*purchaser*) shall allow and confirm, or otherwise validate the leases so granted of the said premises as aforesaid. Now in pursuance of the said agreement the said (*purchaser*), for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and declare, to and with the said (*vendor*), his heirs, executors, and administrators, that he the said (*purchaser*), his heirs and assigns, shall and will at any time or times, at the request and costs of the said *(lessee)* (*or* lessees respectively, *as the case may be*), his (or their respective) executors, administrators, or assigns, allow, ratify, confirm, or otherwise make good, valid, and effective, the indenture of lease, (*or* all and every the indentures of lease), so hereinbefore recited, or otherwise set forth or mentioned as aforesaid, [and all and every other indenture or indentures of or contract or contracts for any demise or lease, or demises or leases, if any, of which he the said (*purchaser*) hath or had information or notice, before or at the time of his accepting of or assenting to these presents], and shall and will in the mean time, and until such ratifying, confirming, or making good and valid the same, he the said *(lessee)*, his executors, administrators, and assigns, (*or* they the said several lessees,

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and their respective executors, administrators and assigns], paying the [*or* their respective] yearly rent [*or* rents] and performing the several covenants and agreements on their part or respective parts to be performed, permit and suffer him and them, peaceably and quietly to have, hold, occupy, and enjoy, all and singular the premises therein comprised, for and during all the residue now to come and unexpired of the term or period thereby expressed or intended to be granted thereof, without any ejectment, hindrance, or disturbance of or by him the said (*purchaser*), his heirs or assigns, or any person or persons who shall or may be entitled thereto, or to any estate or interest therein, from, under, or in trust for him or them, and also shall and will thereby or otherwise save harmless, and keep indemnified the said (*vendor*), his heirs, executors, and administrators from and against the proviso or covenant in the said indenture of lease [*or* indentures of lease respectively] contained on his or their part or behalf, for such peaceable and quiet enjoyment and tenure of the said premises as aforesaid."

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(B). *Variation where the Mortgagee is an Infant.*

If the legal estate be vested in an infant mortgagee, or otherwise under a dry or unbeneficial trust, or upon trusts which have been performed, satisfied, or determined, he will on application to the Court of Chancery, under the stat. 7 Ann. c. 19. be directed to convey to the mortgagor, or other person entitled to call for a conveyance. In which case, after making the infant a party, by the description of "an infant under the age of twenty-one years, (that is to say) of the age of years or thereabouts, and being the eldest son and heir-at-law of late of in the county of deceased, of the first part," and the other persons interested, also parties, and reciting the contract for purchase, &c. as in the preceding precedent, proceed,

AND WHEREAS by an order of the High Court of Chancery made on the day of last, upon the petition of the said (*vendor*) it was referred to ( ), one of the masters of the said court, to examine and certify how the said estate was vested in the said (*infant*), and whether he was an infant and a trustee or mortgagee within the intent and meaning of the act of parliament made in the seventh year of the reign of her late majesty Queen Ann, intituled, "an Act to enable infants who are seised or possessed of estates in fee in trust, or by way of mortgage, to make conveyances of such estate," and further ordered, that after the master's report such further order should be made as should be just. AND WHEREAS the said master did on the day of last make his report, and did thereby certify among other things that the said (*vendor*) did in his lifetime pay to the said (*mortgagee*) all the principal and interest money due to him on the said security, but that before any reconveyance was made of the said premises the said mortgagee died, after making his will bearing date, &c. and thereby appointed the said ( ) executors thereof, who afterwards duly proved the same, but that the said mortgagee did not by his said will make any disposition of

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the said mortgaged premises, whereby the legal estate therein upon his death descended to and vested in the said (*infant*) as his eldest son and heir-at-law, and was then vested in him as such heir-at-law; and that the said (*infant*) was an infant of the age of years and upwards, and he conceived that the said (*infant*) was a trustee or mortgagee within the intent and meaning of the said act of parliament. AND WHEREAS by an order of the said court made by the right honourable the Lord High Chancellor on the day of last past, it was ordered that the said (*infant*) should, pursuant to the said act of parliament, convey the aforesaid mortgaged premises according to the said master's report, as by the said will, order, and report respectively, reference being thereto respectively had, will more fully appear. AND WHEREAS the said (*vendor*) hath contracted with the said (*purchaser*) for the sale to him of the said hereditaments and premises for the sum of £ . NOW THIS INDENTURE WITNESSETH, that in pursuance of and obedience to the hereinbefore in part recited order of the High Court of Chancery (1), and for and in consideration of the sum of five shillings of lawful money to him the said (*infant*) in hand paid by the said (*purchaser*), the receipt whereof is hereby acknowledged, he the said (*infant*) by the direction of the said (*vendor*), testified, &c. HATH bargained, sold, remised, and released, and by these presents DOTH bargain, sell, remise, release, and confirm unto the said (*purchaser*) and his heirs, ALL, &c. TO HOLD, &c. *as ante*, p. 133.

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(1) If the reconveyance is intended to be made to the vendor in order to enable him to convey to the purchaser, (and see *ante*, p. 119, n. (1)), say,

"And to the intent that the said hereditaments and premises, and the legal estate therein, may be vested in the said *(vendor)*, for the purpose of enabling him to execute a good conveyance thereof to the said *(purchaser)*, and for and in consideration of, &c. paid to the said *(infant)*, &c. He the said *(infant)* HATH, &c. and DOTH, &c. bargain, &c. unto the said (*vendor*) and his heirs, ALL, &c." *as above.*

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Vendor and Mortgagee for a Term.

No. XXXVII.

Conveyance by a Vendor *and a* Mortgagee *for a* Term *to a Purchaser* (1); *the Term assigned to* merge.

Variations *where it is assigned to* attend, *&c.*
Where the Mortgagee *is himself the* Purchaser.
Where the Purchaser takes to Uses to bar Dower, &c. as in margins below.

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the mortgagee*) of, &c. of the first part, (*the vendor*) of, &c. of the second part, and (*the purchaser*) of, &c. of the third part (2). WHEREAS by an indenture bearing

Parties.

Recital of mortgage for a term.

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(1) If the conveyance be of a *moiety* or other *undivided part*, see Vol. I. No. XXVI.

Moiety, &c.

(2) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the 4th part," as *ante*, No. XXXI. p. 2, n. (1).

If the term be intended to be assigned to a trustee to attend the inheritance by the same assurance by which the inheritance is conveyed, make him a party of the *third* part, and

Term to attend,

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date on or about the day of , in the year , and made or expressed to be made between the said (*vendor*) of the one part, and the said (*mortgagee*) of the other part: the said (*vendor*) in consideration of the sum of £ then advanced to him by the said (*mortgagee*) by way of loan, granted and demised unto the said (*mortgagee*) his executors, administrators, and assigns, (amongst other messuages, lands, and hereditaments, *if the case be so*) ALL, &c. (1).

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the purchaser of the *fourth* part; but if it is to be assigned by a separate deed (which is preferable), see WILDE'S SUP. or INDEX, *voc.* ASSIGNMENT.

Wife. Although the mortgagor be married, yet if the mortgage was made before marriage, his wife need not be a party in respect of dower, for "if a person purchases an estate of inheritance, which is in mortgage for a term of years, whether he only purchases the equity of redemption or discharges the mortgage, the wife of the mortgagor will not be entitled to her dower in equity;" and if judgment be given for her at law it will be with a *cesset executio* during the term, which, if the term be of long duration, deprives her virtually of her dower, Co. Lit. 208, a. n. (1).

But if the mortgage were subsequent to the marriage, she will be dowable, unless a fine was levied by her, and the limitation of the estate subject to the mortgage was to uses preventing an ulterior seisin in the husband during the coverture, and see Co. Lit. ub. Sup. and *ante*, No. XXXVI. p. 133, n. (3).

Parcels. (1) Insert here an accurate description of the premises from the mortgage deed—sometimes instead of introducing a description of the premises here, they are referred to by a general description of

"The several messuages, lands, &c. hereinafter particularly described, and mentioned or intended to be by these presents granted and released;"

But as by inserting them here, the purchaser cannot fail to take

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To hold the same, with their appurtenances, unto the said (*mortgagee*) his executors, administrators, and assigns, from the day next before the day of the date of the said indenture, for the term of years, thence next ensuing, at the yearly rent of a pepper-corn if demanded; subject nevertheless, to a proviso or agreement therein contained, that if the said (*vendor*) his heirs, executors, or administrators, or any person or persons on his or their behalf, should pay, or cause to be paid to the said (*mortgagee*) his executors, administrators, or assigns, the said sum of £ with interest for the same, after the rate of £5 per cent. per annum, on the . day of , which would be in the year , he the said (*mortgagee*) his executors, administrators, or assigns, should and would, upon the request, and at the expense of the said (*vendor*) his heirs or assigns, assign or surrender the said messuages, lands, tenements, and hereditaments, unto the said (*vendor*) his heirs, exe-

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from the mortgagee all the lands, &c. which were demised to him, and the mortgagee is in no danger of conveying, or assuming to convey more, this seems to be in general the more safe and better way for both parties; but the propriety of this or the other mode, will often depend upon particular circumstances; as where, for example, a *part* only of the mortgaged premises are proposed to be conveyed to the purchaser; in this case, to prevent the necessity of repeating the description of the lands purchased, it may be proper to postpone such description to the operative part of the deed; with the addition of—

"Being part and parcel of the messuages, &c. comprised in the hereinbefore in part recited indenture, of," &c.

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cutors, administrators, or assigns, or unto such other person or persons, and upon and for such trusts, ends, intents, and purposes, as he or they should lawfully direct in that behalf, for all the residue which should be then to come of the said term (1). AND WHEREAS the said principal sum of £ was not paid to the said (*mortgagee*) at the time in the said proviso or agreement appointed for the payment thereof, nor hath the same since been paid, whereby his estate and interest in the said hereditaments became and still is absolute at law, for the residue of the said term of years, and redeemable only in equity. AND WHEREAS, (2) there is now due to the said (*mortgagee*) for principal and interest upon the said mortgage, the sum of £ [and (or as the case may be) the further sum of £ for costs and expenses occasioned by reason of the nonpayment of the same], making together the sum of . AND WHEREAS the said (*purchaser*) hath con-

Default made.

Mortgage money now due.

Contract for purchase.

Term void.

(1) Or, if such were the case,

"Then the said term should cease and be void to all intents and purposes whatsoever."

And in this case if the money were paid on the day appointed, the term became extinguished, and cannot now be assigned; but if it were not paid on the day mentioned in the proviso, the condition upon the performance of which the term was to cease, not being performed, the term still has continuance, and may be made subservient to any purpose the owner of the inheritance may choose.

Mortgage previously discharged.

(2) If the mortgage has been already paid off, see variations to No. XXXVI.

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tracted (1) with the said (*vendor*) (2) for the absolute purchase of the messuages, lands, and hereditaments, comprised in the said indenture of mortgage, free from all incumbrances (except as hereinafter is mentioned), for the sum of out of which it has been agreed that the said sum of shall be paid to the said (*mortgagee*) in discharge of his said mortgage, and that the said term of years shall be assigned to the said (*purchaser*) (3) for the purpose of being merged in the inheritance of the said premises, in the manner hereinafter mentioned. NOW THIS

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(1) If the premises were sold by public auction, see *ante*, No. XXXI. p. 4. n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4). Order of court.

(2) If the mortgagee be himself the purchaser, recite, Mortgagee purchaser.

"And whereas the said (*mortgagor*) in consideration of the said sum so due to him by the said (*mortgagee*), for principal and interest upon the security of the said premises as aforesaid, [and of the further sum of £ to the said (*mortgagor*) in hand paid, &c. making together the sum of £ , and being in full, &c. hath agreed to release to him the equity of redemption of the said premises, and the reversion thereof, and the said (*mortgagee*) has requested that the said term of years may be assigned to the (*trustee*) to be attendant on the inheritance of the premises."

(3) If the term be intended to be assigned to a trustee to attend the inheritance, say, Term to attend.

"And that the said term of years, so demised to him as aforesaid, shall be assigned to the said (*trustee*), in trust to attend the fee-simple and inheritance of the said lands and hereditaments, in the manner hereinafter mentioned."

PURCHASES. INDENTURE WITNESSETH (1), that in pursuance of the said contract and agreement, and in consideration of the sum of of lawful current money (2) of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*mortgagee*) in hand paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, at the request and by the direction, and for and on behalf of the said (*vendor*) testified by his being a party to, and sealing and delivering these presents, the receipt whereof [and that the same is in full payment and satisfaction of all principal, interest, and other monies, now due to him upon or in respect of the said hereinbefore in part recited mortgage], the said (*mortgagee*) doth hereby expressly acknowledge, [and of and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*purchaser*) and (*vendor*) and each of them, and their respective heirs, executors, and administrators, and also the said lands and hereditaments as well by these presents, as by the receipt or acknowledgment for the same sum hereupon indorsed] (3), he the said (*mortgagee*) at the

Vendor and Mortgagee for a Term.

WITNESS, in consideration of the sum due upon mortgage.

WITNESS. (1) Of the witnessing part of a deed, see Vol. I. No. XV. p. 123, *et seq.* and 4 Elem. Conv. 2d Ed. p. 98. *et seq.*

Consideration. (2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6), *et seq.*

Term to attend. (3) If the term is to be assigned to attend, add,

"And also for and in consideration of the sum of 10*s.* of

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request, and by the direction and appointment of the said *(vendor)* testified as hereinbefore is mentioned (1), HATH bargained, sold, assigned, surrendered and yielded up, and by these presents DOTH bargain, sell, assign, surrender, and yield up: AND for the considerations aforesaid, and in consideration of the sum of five shillings of like money, to the said (*vendor*) at the same time in hand paid by the said (*purchaser*), the receipt whereof is hereby acknowledged, he the said (*vendor*) HATH bargained, sold, assigned, transferred, set over, ratified, and confirmed, and by these presents, DOTH bargain, sell, assign, transfer, set over, ratify, and confirm, "unto the said (*purchaser*) and his heirs," (2) ALL (3) those the said

The mortgagee assigns, and the vendor confirms.

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like lawful and current money, at the same time paid to the said *(mortgagee)* by the said (*trustee*), the receipt whereof is hereby acknowledged."

(1) If the term is assigned to attend, add, Term to attend.

"And at the nomination of the said (*purchaser*)."

(2) If the term be assigned to attend, say,

"Unto the said (*trustee*), his executors, administrators, and assigns."

Instead of the words within inverted commas.

(3) If a part only of the lands, &c. in mortgage have been sold to the purchaser, a particular description of them may be here inserted, instead of a reference to the mortgage deed, concluding such description with, Parcels part sold.

"Being part and parcel of the several messuages, or tenements, lands, and hereditaments comprised in, and granted and demised by the said hereinbefore in part recited indenture of demise, by way of mortgage, mentioned to bear date the day of or expressed or intended so to

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several messuages, lands, tenements, hereditaments, and all and singular other the premises comprised in the said hereinbefore in part recited indenture of the day of , and

To the purchaser.

thereby granted and demised to the said (*mortgagee*), his executors, administrators, and assigns, for the term of years, as hereinbefore is mentioned, with all and singular the rights, members, appendants, and appurtenances to the same premises belonging, and all the estate, right, title, interest, term and terms for years now to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said (*mortgagee*) and (*vendor*) respectively, under or by virtue of the said hereinbefore in part recited indenture, in, to, out of, or respecting the said premises [(1) hereinbefore mentioned to be hereby assigned, and every part and parcel thereof, for the now residue of the said term of years, together with the said recited indenture of demise or mortgage,] and all assignments (if any) thereof, or of any part of the same (2). [To HAVE AND TO HOLD the messuages,

To the intent that the term may merge.

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be, with all and every the rights, members, and appurtenances to the same respectively belonging, &c. and all the estate, &c." *as above.*

Term to merge.

(1) If the term is to be merged, the lines within brackets may be omitted, and also the *habendum* to p. 154.*

Term to attend.

(2) If the term be intended to be assigned to attend the inheritance, add,

"And all benefit and advantage incident or belonging to

lands, tenements, hereditaments, and premises hereby assigned, or mentioned and intended so to

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the same, or to the covenants and agreements therein contained, or to any of them :"

And let the habendum be

" To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and premises hereinbefore bargained, sold, assigned, and transferred, or mentioned and intended so to be, and every part and parcel thereof, with their respective appurtenances, unto the said *(purchaser's trustee)* his executors, administrators, and assigns, from henceforth for and during all the residue and remainder which is or may be now to come and unexpired, of the said term of years, in or by the said hereinbefore in part recited indenture of demise or mortgage granted and demised, and hereby assigned as aforesaid, or intended so to be, discharged of the said mortgage debt, IN TRUST, nevertheless, for the said (*purchaser*), his heirs and assigns, and to be assigned or disposed of from time to time, as he or they shall, in writing under his or their hand or respective hands, direct or appoint in that behalf; and in default of, and until any such assignment or disposition shall be made and take effect, IN TRUST, and to the intent that the residue for the time being of the said term and estate hereby expressed and intended to be assigned, or so much thereof of which no such assignment or disposition shall be made or take effect, shall and may attend and wait upon the freehold, reversion, and inheritance of the lands and hereditaments hereinafter granted and released, or otherwise assured, or mentioned and intended so to be, to and for the sole use and benefit of the said (*purchaser*), his heirs and assigns, in order that the same may be kept on foot, and preserved from merger, forfeiture, or other extinguishment, and to protect the said premises therein comprised, from all subsequent and intermediate incumbrances whatsoever, if any such there be: [AND IN TRUST, that he the said (*trustee*), his executors, adminis-

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be, unto the said (*purchaser*) and his heirs (1), so and in such manner, and]* to and for the intent and purpose, that the residue or remainder which is now to come and unexpired of the said term of years therein, may henceforth, [by way of surrender, release of right, or otherwise,] be and become consolidated with, and merged and extinguished in, the fee simple and inheritance of the hereditaments, hereafter by these presents released and conveyed to him the said (*purchaser*), and his heirs, and [to this further intent and purpose] that until the said term shall be so merged and extinguished the said (*mortgagee*), his executors and administrators, shall and may remain and continue possessed of, and interested in the same, in trust to attend the fee-simple, reversion, and inheritance of the said premises, to and for the use and benefit of him the said (*purchaser*), his heirs and assigns for ever (2). AND

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trators, and assigns, shall and do permit and cause the said term and estate, and all legal and equitable benefit and advantage thereof, to be at all times, and from time to time, holden, enjoyed, and disposed of accordingly."]

Fee conveyed to a trustee.

(1) Sometimes the inheritance is conveyed to a trustee for the purchaser, and the term to the purchaser; but as the term will, in this case, be personal assets on the death of the purchaser, Chapman *v.* Bond, 1 Vern. 188; Thruxton *v.* Attorney-General, ib. 340, 2 Ch. Ca. 49; the mode here adopted is the most proper, unless where it is the wish of the purchaser, that the term should be such assets.

Fee first conveyed.

(2) Where it is intended that the term should be extinguished, the fee is sometimes conveyed to the purchaser by the vendor in the first instance, and a surrender afterwards made to him of the

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the said *(mortgagee)*, for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, with and to the said *(purchaser)* (1), his heirs and assigns, by these presents, in manner following (that is to say), that he the said *(mortgagee)* hath not at any time or times heretofore, [either alone or together with the said (*vendor*) or any other person or persons whomsoever,] made, done, executed, committed, or knowingly omitted, suffered, or occasioned [nor been party or privy to] any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments and premises, hereby assigned, or intended so to be, or any part, or the said in part recited indenture of demise, or the said term of years, or any other estate or interest in the same premises respectively, are, is, can, shall, or may be forfeited, vacated, or become void or voidable, or otherwise impeached, charged, incumbered, or prejudicially affected, in any manner howsoever.

Covenant by the mortgagee that he had done no act to incumber.

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term, by the mortgagee; but as the term will equally merge in the inheritance, upon their uniting in the purchaser, whether the one or the other be first vested in him; and it seems more in order that the mortgagee, who has the legal estate, should first convey; and as this arrangement renders it more easy to adapt the precedent to the variations requisite, where the term is assigned to attend the inheritance, I have adopted this mode in preference to the other.

(1) If the term be assigned to attend, this covenant may be, "With and to the said (*purchaser's trustee*), his executors, administrators, and assigns."

Term to attend.

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AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and performance of the said hereinbefore in part recited agreement, and in consideration of the sum of £ so paid by the said *(purchaser)* to the said (*mortgagee*) as aforesaid, and for and in consideration of the further sum of of such lawful and current money as hereinbefore is mentioned, being the residue of the said purchase money, or sum of to the said (*vendor*) in hand well and truly paid by the said (*purchaser*), at or before the sealing and delivery of these presents, the receipt of which said sum by him the said *(vendor)* and the payment of which said sum of to the said (*mortgagee*) by such direction as aforesaid, making together the said sum of and being in full for the absolute purchase of the fee simple and inheritance, in possession, of and in all and singular the messuages, lands, tenements, and hereditaments, hereinafter described, free from incumbrances, the said (*vendor*) doth hereby expressly acknowledge [and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, and administrators, and every of them, and also the said lands, hereditaments, and premises, by these presents], he the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm, unto the said *(purchaser)* and his heirs,

FURTHER WITNESS. The vendor in consideration of the residue of the purchase money.

Grants and releases the inheritance.

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ALL (1), &c. or by whatever other name or names, description or descriptions, the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was called, known, or distinguished; and also all other the messuages, lands, tenements and hereditaments (if any) comprised in the indenture of bargain and sale for a year, hereinafter referred to; being the same or part and parcel *(as the case may be)* of the same messuages, lands, tenements, and hereditaments, as were demised by, or described or comprised in the said hereinbefore in part recited indenture of the day of ; TOGETHER with all [houses (2), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, appendants, and appurtenances whatsoever, to the said messuages, lands, tenements, heredita-

General appurtenances.

(1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. 13; No. XVI. p. 172; and No. XXVII. p. 485, n. (2). and *ante*, No. XXXI. p. 6, n. (2).; also 4 Elem. Conv. 2d edit. p. 104. Parcels.

(2) For general words applicable in different species of property, see INDEX *voc.* GENERAL WORDS. General words.

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ments, and premises, or any part thereof belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, except, &c. (1)] (ALL which said messuages, lands, tenements, and hereditaments, are now in the possession of, or legally vested in, the said (*purchaser*) by virtue of a bargain and sale for a year (2) to him thereof made by the said (*vendor*) (for five shillings consideration) by indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, equity, and right of redemption, claim and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments and writings whatsoever, in anywise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior

Bargain and sale for a year.

Grant of title deeds.

Exceptions.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 3 Elem. Conv. 2d edit. p. 108.

Bargain and sale.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110. and No. XIV. p. 117.

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value, which now are, or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies, (duly stamped) when and as the said (*purchaser*) his heirs or assigns shall require the same, of all deeds, muniments and writings, (not being of record), so in his or their possession, custody or power, or which can or may be procured without action or suit as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1); such copies, when first required, to be made and delivered at the expense of the said *(vendor)* his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same (2),] To HAVE AND TO HOLD the several messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenants, and all and singular other the premises hereby granted, released, or otherwise assured, or intended so to be, unto the said (*pur-*

And copies.

To HOLD to the purchaser in fee-simple.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

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chaser) his heirs and assigns " to and for the use and behoof of him the said *(purchaser)* his heirs and assigns, for ever (1)," wholly and absolutely discharged and exonerated, of and from the said sum of £ so secured thereupon as aforesaid, and all interest and other monies now or heretofore due for or in respect thereof, and of and from all and singular other liens, charges, claims, and demands whatsoever, as well legal as equitable, now or heretofore subsisting, or which hereafter shall or may subsist by reason of or in relation to the same. AND (2) the said *(vendor)* for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, with and to the said *(purchaser)* his heirs and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said *(vendor)* (3), to the contrary, he the said *(vendor)* at the time of

Covenant by vendor that he is seised in fee.

Uses to bar dower.

(1) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

" Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

Add the limitation referred, *ante*, No. XXXI. p. 10. n. (3).

Covenants.

(2) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Vendor entitled by devise, &c.

(3) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

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the sealing and delivery of these presents (save only so far as regards the hereinbefore in part recited indenture of demise), is lawfully and rightfully seised in his demesne as of fee, in his own right, and to his own use, of and in all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted, and released, as aforesaid, or otherwise assured or intended so to be, as of, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, and in severalty, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, except (1). AND ALSO, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure, all and

And hath right to convey.

" Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

If by descent, add, or by descent.

" Or any of his ancestors," and see Vol. I. No. XV. p. 141. n. (39); and No. XVI. p. 178. *et seq.* in notes.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427. Except, &c.

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singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto (1) "and to the use and behoof of the said (*purchaser*) his heirs and assigns;" and that they the said (*vendor*) and (*mortgagee*) respectively, have like right, title and authority, to bargain, sell, assign, transfer, and confirm, the same hereditaments and premises, "unto the said (*purchaser*) and his heirs" (2), for the residue now to come and unexpired, of the said term of years thereof granted as aforesaid, to and for the intent

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Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

Term to attend.

(2) If the term be assigned to attend, say,

"To the said (*purchaser's trustee*) his executors, administrators, and assigns, for the residue now to come and unexpired of the said term of years, so granted thereof, as aforesaid, in trust, and in the manner hereinbefore expressed."

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and purpose, and in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the said hereditaments and premises, with their and every of their respective rights, members, and appurtenances; and receive and retain the rents, issues, profits, and proceeds thereof to and for his and their own use and benefit (1), without any manner of hindrance, interruption, claim or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons, now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him, them, or any of them (2), or any of his or their acts, means, or default. (AND that free

That the purchaser shall quietly enjoy.

Free from incumbrances.

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(1) If the term be assigned to attend, add,

Term to attend.

"And for the said (*trustee*) his executors, administrators, and assigns, to enter in and upon the same hereditaments and premises, and hold and enjoy the same for the residue now to come and unexpired of the said term of years, upon the trusts and for the intents and purposes aforesaid," without, &c. (*as in the text*).

(2) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 161, notes.

Vendor entitled by devise, &c.

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and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements,] mortgages, demises, leases, contracts, devises, wills, conveyances, and assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other estates, rights, titles, interests, charges, liens, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time hereafter shall or may be made, executed, created, occasioned, or knowingly suffered by the said (*vendor*) or his heirs or any person or persons, claiming, or entitled to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him or them, or by or through his or their acts, means, defaults, consent, or privity.) AND moreover, that he the said (*vendor*) and his heirs, and all and every person or persons now or at any time hereafter rightfully claiming or possessing

Covenant for further assurance.

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any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or relating to the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, by or through his or their acts, means, or defaults, shall and will from time to time, and at all times hereafter, upon the request, and at the cost and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected,] with all proper despatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever, [whether by feoffment, fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds, enrolled or otherwise, release, confirmation, limitation, or declaration, of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better, and more effectually and absolutely or satisfactorily granting, releasing, conveying, confirming, and assuring the said messuages, lands, tenements, hereditaments and premises, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their respective rights, members, privileges, appendants, and appurtenances, unto and to and for the use, behoof, and benefit of the said

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(*purchaser*) his heirs and assigns (1), in the manner aforesaid or otherwise, as he or they, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require, and prepare and tender, (if the nature thereof permit) for his or their signature and execution; [so that such further assurance or assurances, or any of them, do not contain or imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults, and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, (2). IN WITNESS, &c.

Term to attend,

(1) If the term be assigned to attend, add,

"And for the further, better, and more perfectly or satisfactorily assigning the said term of years therein, unto the said (*trustee*) his executors, administrators, and assigns, upon and for the trusts, intents, and purposes aforesaid."

Production of deeds.

(2) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196.

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For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

If the purchaser desire the mortgage to continue a charge, see *post*, p. 168, rider (A).

Provisoes, &c.

Mortgage to continue a charge.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

Execution, &c.

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(A) Variation *where the Purchaser is desirous of having the Mortgage Money continued a Charge upon the Estate for the Benefit of his personal Representative* (1).

In the case here supposed add to the preceding precedent—

AND WHEREAS the said (*purchaser*) is desirous that the said sum of £ so lent on the security of the said hereditaments as aforesaid, should be kept on foot and continued as a subsisting charge thereupon for the benefit of his personal representative. NOW THIS INDENTURE WITNESSETH, that in order to effectuate the said end and intent, and in consideration of the said sum of £ so paid to the said (*mortgagee*) by the said (*purchaser*) as hereinbefore is mentioned, and for and in consideration of the sum of 5*s.* to the said (*mortgagee*) in hand paid by the said (*purchaser's trustee*) the receipt whereof is hereby acknowledged, HE the said (*mortgagee*) at and by the request and direction of the said (*vendor*), and the nomination of the said (*purchaser*) testified, &c. HATH bargained, sold, assigned, transferred, and set over, and by these presents, doth, &c. unto the said (*trustee*), his executors, administrators, and assigns, ALL that and those the said messuages, &c. comprised in and expressed to be demised by the hereinbefore in part recited indenture of the day of and all the estate, &c. To HAVE AND TO HOLD the said hereditaments with the appurtenants, unto the said (*trustee*) his executors, administrators, and assigns, for all the residue of the said term of years [subject (*if the purchase be of the equity of redemption only*

(1) Where the purpose is intended to be effected by a separate deed, which is a preferable mode, see INDEX, *voc.* ASSIGNMENT.

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of the vendor) to the equity of redemption which is now subsisting or capable of taking effect in the said premises on payment of the said sum of £ and interest thereof to the said (*trustee*) his executors, administrators, and assigns], and it is hereby expressly declared by the said (*purchaser*) for himself and his heirs, that the said sum of £ so charged upon or secured upon the said hereditaments, or any part thereof, shall not nor shall the same or any part thereof be deemed or construed to merge in, or be consolidated with the said hereditaments or the freehold of inheritance thereof, but that he the said (*trustee*) his executors, administrators, and assigns, shall from henceforth, and from time to time, and at all times hereafter, have, hold, receive, and take the same in trust for him the said (*purchaser*), his executors, administrators, and assigns, as and for, and to the end and intent, that the same may be, and be considered to be, a part of and belonging to his personal estate and effects, and that in the mean time, and until the said principal and interest money respectively shall be so by him or them received, he and they shall stand, and be interested in and entitled to the same, upon and for such the said trusts, ends, and intents accordingly, and the said (*mortgagee*) for himself, &c. (*add covenant from the mortgagee, unless he be himself the purchaser, that he has not encumbered, as ante*, p. 160.

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No. XXXVIII.

Conveyance by a Vendor *and* Annuitant *to a Purchaser.*

Variations *where the Purchaser takes to uses to bar Dower.*

THIS INDENTURE of parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor*) of, &c. (1) of the first part, (*the annuitant*) of, &c. of the second part, (*the annuitant's trustee*) of, &c. of the third part, and (*the purchaser*) of, &c. of the fourth part. WHEREAS, &c. (2). AND WHEREAS, by an indenture bearing date the day of which was in the year , and made or expressed to be made between the

Recital of grant of annuity.

Wife of purchaser.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part,"

As *ante*, No. XXXI. p. 2. n. (1).

Recitals.

(2) As to recitals, see Vol. I. p. 162, in notes; also 4 Elem. Conv. 2d edit. p. 107; and for the form of recitals of different species of deeds, &c. see INDEX *voc.* RECITALS.

said (*vendor*) of the first part, the said (*annuitant*) of the second part, and the said (*annuitant's trustee*) of the third part; (a memorial whereof was duly enrolled in the High Court of Chancery) the said (*vendor*) gave, granted, and confirmed unto the said (*annuitant*) and his assigns, for and during the term of his natural life, (*or* the life of (*nominees*) *as the case may be*), an annuity or clear yearly rent charge or sum of £ to be issuing and payable out of, and chargeable upon, the several messuages, lands, and hereditaments hereinafter described. AND for better securing the payment of the said annuity, the said (*vendor*) at the request of the said (*annuitant*) thereby demised the same hereditaments unto the said (*annuitant's trustee*) his executors, administrators, and assigns, for the term of years, to be thence next ensuing if the said (*annuitant*) should so long live, UPON the TRUSTS therein expressed for securing the payment of the said annuity or yearly rent charge, in case the same should at any time be in arrear for the space of time therein mentioned. And in the said indenture was contained a proviso or agreement, that the said (*vendor*) should be at liberty to repurchase the said annuity upon payment to the said (*annuitant*) of all arrears thereof, and of the sum of £ as the consideration for such repurchase, and that upon receipt of the said purchase money, the said (*annuitant*) should release, assign, or surrender the said annuity, and the several securities for the same, and also the said hereditaments chargeable

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with the payment thereof, in such manner as the said (*vendor*) his heirs, executors, or administrators, or his or their counsel in the law should require. AND WHEREAS the said (*vendor*) by his bond or obligation in writing, bearing or expressed to bear even date with the said in part recited indenture, became bound for himself, his heirs, executors, and administrators, to the said (*annuitant*) his heirs, executors, administrators, and assigns, in the penal sum of £ with a condition there underwritten for making void the same on due payment of the said annuity or yearly rent charge at the times and in the manner in the said indenture appointed for payment thereof, and by a warrant of attorney under his hand and seal, bearing or expressed to bear even date with the said bond, the said (*vendor*) authorised judgment to be entered up against him upon the said bond in an action of debt or otherwise, for the said sum of £ with a declaration by way of defeazance there underwritten, that the same was a collateral security only for the said annuity, and that no execution should be taken out thereupon until some default made in payment thereof. AND WHEREAS, default having been made in payment of the said annuity, judgment was entered up against the said (*vendor*) by virtue of the said warrant of attorney as of term next after the date thereof, but no execution was or hath since been issued out, upon, or in pursuance of the said judgment. AND WHEREAS the annuity and all arrears thereof, have since been fully paid and satisfied, up to the

day of the date of these presents. AND WHEREAS, the said *(purchaser)* has contracted (1) with the said *(vendor)* for the absolute purchase of the lands and hereditaments comprised in the said in part recited indenture, free from incumbrances except as hereinafter is expressed, for the sum of £ out of which it has been agreed between the said *(vendor)* and annuitant that the said annuity or yearly rent charge or sum of £ so charged thereon by the said in part recited indenture, shall be re-purchased in pursuance of the proviso in the same indenture contained in that behalf, and the said *(annuitant)* and the said *(annuitant's trustee)* at his request have respectively agreed to execute such release and surrender of their respective estate and interest, in the said lands and hereditaments, as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH, (2) that in pursuance of the said agreement, and for and in consideration of the sum of £ (3) of lawful money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said *(vendor)* in

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Contract for purchase.

WITNESS, that in consideration, &c. of part of purchase money paid to vendor.

(1) If the premises were sold by *public auction,* see *ante,* No. XXXI. p. 4. n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 163. n. (4). Order of court.

(2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98. WITNESS.

(3) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165. n. (6). *et seq.* Consideration.

If the premises are copyhold, see Vol. I. No. XVIII. Copyholds.

If part copyhold, see *ib.* Nos. XX. XXI.

If there be an outstanding term to be surrendered, see *ante,* No. XXXI. p. 6. n. (1). Outstanding term.

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hand well and truly paid by the said *(purchaser)* in part of the said purchase money or sum of £ at or immediately before the sealing and delivery of these presents, with the privity and consent of the said *(annuitant)* testified by his being a party to, and sealing and delivering these presents, the receipt of which said sum of £ and that the same is in part payment of the said purchase money, or sum of £ , the said *(vendor)* doth hereby acknowledge, and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate the said *(purchaser)* his heirs, executors, administrators, and assigns, and likewise the said premises by these presents (1), and also for and in consideration of the further sum of £ of like lawful and current money, at the same time well and truly paid by the said *(purchaser)*, at and by the request and direction of the said *(vendor)* testified by his sealing and delivery of these presents, to the said *(annuitant)* for the repurchase of the said annuity or yearly sum of £ as hereinafter is mentioned; and being the residue and in full of the said purchase money or sum of £ the receipt and payment of which said several sums of

And of residue to annuitant.

Dower.

(1) If the estate be intended to be limited to a trustee of the purchaser for preventing a title to dower, add, (but this is not material),

"And in consideration of the further sum of five shillings of like money aforesaid to said *(vendor)*, at the same time to him in hand paid by the said *(purchaser's trustee)* the receipt whereof is hereby acknowledged."

£ and £ respectively, and that the same, making together the sum of £ are in full for the absolute purchase of the fee-simple and inheritance in possession of the messuages, lands, and hereditaments hereinafter described, and granted and released, or otherwise assured, or intended so to be, discharged of the said annuity or yearly sum of £ , and of all claims and demands in respect thereof, the said *(vendor)* doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge the said *(purchaser)* his heirs, executors, and administrators, and also the said hereditaments, by these presents. He the said *(vendor)* with the like privity and consent of the said *(annuitant)* and so testified as aforesaid, HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm, unto the said *(purchaser)* and his heirs, ALL that, &c. (1) or howsoever otherwise the said capital messuage or mansion-house, lands, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and here-

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Vendor grants, &c.

Parcels.

(1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2); and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104. Parcels.

For general words applicable in different species of property, see INDEX, *voc.* GENERAL WORDS. General words.

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ditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to; TOGETHER with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendants, and appurtenances whatsoever, to the said messuage, lands, tenements, hereditaments, and premises, or any part thereof, belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any part thereof, now or heretofore holden, used, occupied, or enjoyed], except, &c. (1). (ALL which messuage or tenements, lands and hereditaments, are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (2) to him thereof made by the said (*vendor*) (for five shillings consideration), by indenture bearing date on the day next before the sealing and delivery of these presents, for the

General appurtenances.

Reference to the bargain and sale.

Exception.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Lease for a year.

(2) See the form of the bargain and sale for a year, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and all and singular the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, or any part thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*), in, to, out of, upon, or respecting the said hereditaments and premises or any part thereof. TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs, executors, or administrators, or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity (1), and true and attested copies, (duly stamped) when and as

Grant of title deeds.

And copies.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

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the said (*purchaser*) his heirs or assigns shall require the same, of all other deeds, muniments, writings, and evidences (not being of record) so in his or their custody or power as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same.

To HOLD to the purchaser in fee.

TO HAVE AND TO HOLD (1) the said messuages, lands, tenements, hereditaments, and premises hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their respective rights, members, appendants, and appurtenances, unto "the said (*purchaser*) and his heirs, and to the use and behoof of him the said (*purchaser*) his heirs and assigns for ever," (2), freed and absolutely discharged and exonerated of and from the said annuity or yearly

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Habendum.

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Uses to bar dower.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

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rent-charge of £ and all arrears thereof, and of and from all other charges and incumbrances whatsoever, except as hereinafter is expressed. AND THIS INDENTURE FURTHER WITNESSETH (1) that in consideration of the sum of £ of such lawful and current money, as hereinbefore is mentioned, in hand well and truly paid by the said *(purchaser)* to the said *(annuitant)* at or immediately before the sealing and delivery of these presents, at the request and by the direction of the said *(vendor)* testified as aforesaid, in full for the repurchase and extinguishment of the said annuity or yearly rent-charge of £ so granted or secured to the said *(annuitant)* in and by the said in part recited indenture of the day of as aforesaid, the receipt whereof, and that the same is in full for such repurchase and extinguishment, the said *(annuitant)* doth hereby

FURTHER WITNESS. Annuitant releases the annuity.

(1) In the present case the annuity is supposed to be repurchased out of the consideration money; but if a person who has an annuity or rent-charge, issuing out of an estate which is sold, be disposed to join in the conveyance to a purchaser, and at the same time preserve his annuity, he should, in order to prevent its extinguishment, previously assign it to a trustee in trust for himself, and have a proviso inserted in the deed of conveyance, that nothing therein contained shall be deemed or construed as a transfer, assignment, or relinquishment of the said annuity, or to prejudice his right to or remedies for recovering the same, but that the said annuitant or the said trustee shall and lawfully may receive, take, and enjoy the same, and have, possess and exercise all and every the rights, powers, and remedies for recovery thereof, in the same or like manner as if these presents had not been made. Vide opinion of Mr. Booth, 4 Wms. Prec. 1840.

Annuity to continue.

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acknowledge, and of and from the same and every part thereof, doth by these presents acquit, release, exonerate, and for ever discharge the said *(purchaser)* his heirs, executors, and administrators, and also the said *(vendor)* his heirs, executors, administrators, and assigns, and likewise the lands and hereditaments charged with the payment of the same, He the said *(annuitant)* at and by such request and direction of the said *(vendor)*, and so testified as aforesaid, HATH bargained, sold, assigned, released, and quit-claimed, and by these presents DOTH bargain, sell, assign, release, and quit-claim, unto the said *(purchaser)* and his heirs, all that the said annuity, yearly rent-charge, or annual sum of £ so granted or secured to him the said *(annuitant)* by the said hereinbefore in part recited indenture of the day of , and charged upon or issuable out of the aforesaid hereditaments as hereinbefore is mentioned, and all arrears (if any) thereof, and all powers, authorities, remedies, and means for recovering or enforcing the payment thereof, and also the said in part recited indenture, warrant of attorney, and judgment, and all other deeds, instruments, and writings now subsisting and in force for securing the payment thereof, and all and every power and powers of distress and entry, and other powers and remedies for or in relation thereto, and all the estate, right, title, interest, benefit, claim and demand whatsoever, as well equitable as legal, of him the said *(annuitant)* in, to, or concerning the same, to the

end and intent that the said annuity, yearly rent-charge, or annual sum may sink into and be henceforth consolidated with the freehold and inheritance of the messuages, lands, and hereditaments charged with the payment thereof, or otherwise cease and be utterly void and extinguished, and the said messuages, lands, and hereditaments be henceforth and for ever discharged and exonerated from the same and every part or portion thereof (1). AND the said (*annuitant*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*annuitant*) hath not at any time heretofore made, done, committed, or knowingly suffered or omitted, nor caused or procured to be made, done, committed, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof he is, shall, or may be incapable of or prevented from releasing or extinguishing the said annuity or yearly rent-charge of £ or the securities and remedies for the same, in the manner hereinbefore expressed, and according to the true intent and meaning of these presents. AND THIS INDENTURE FURTHER WITNESSETH, that [for and in consideration of the sum of five shillings to the said (*annuitant's trustee*) in hand paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] he the said

Covenant by annuitant that he has power to release, &c.

FURTHER WITNESS, Assignment o annuitant's term to merge

(1) If the vendor's wife be party, add here a covenant to levy a fine, as *ante*, No. XXXI. p. 11.

Vendor's wife.

PURCHASES. *Vendor and Annuitant.*

acknowledge, and of and from the same and every part thereof, doth by these presents acquit, release, exonerate, and for ever discharge the said *(purchaser)* his heirs, executors, and administrators, and also the said *(vendor)* his heirs, executors, administrators, and assigns, and likewise the lands and hereditaments charged with the payment of the same, He the said *(annuitant)* at and by such request and direction of the said *(vendor)*, and so testified as aforesaid, HATH bargained, sold, assigned, released, and quit-claimed, and by these presents DOTH bargain, sell, assign, release, and quit-claim, unto the said *(purchaser)* and his heirs, all that the said annuity, yearly rent-charge, or annual sum of £ so granted or secured to him the said *(annuitant)* by the said hereinbefore in part recited indenture of the day of , and charged upon or issuable out of the aforesaid hereditaments as hereinbefore is mentioned, and all arrears (if any) thereof, and all powers, authorities, remedies, and means for recovering or enforcing the payment thereof, and also the said in part recited indenture, warrant of attorney, and judgment, and all other deeds, instruments, and writings now subsisting and in force for securing the payment thereof, and all and every power and powers of distress and entry, and other powers and remedies for or in relation thereto, and all the estate, right, title, interest, benefit, claim and demand whatsoever, as well equitable as legal, of him the said *(annuitant)* in, to, or concerning the same, to the

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end and intent that the said annuity, yearly rent-charge, or annual sum may sink into and be henceforth consolidated with the freehold and inheritance of the messuages, lands, and hereditaments charged with the payment thereof, or otherwise cease and be utterly void and extinguished, and the said messuages, lands, and hereditaments be henceforth and for ever discharged and exonerated from the same and every part or portion thereof (1). AND the said (*annuitant*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*annuitant*) hath not at any time heretofore made, done, committed, or knowingly suffered or omitted, nor caused or procured to be made, done, committed, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof he is, shall, or may be incapable of or prevented from releasing or extinguishing the said annuity or yearly rent-charge of £ or the securities and remedies for the same, in the manner hereinbefore expressed, and according to the true intent and meaning of these presents. AND THIS INDENTURE FURTHER WITNESSETH, that [for and in consideration of the sum of five shillings to the said (*annuitant's trustee*) in hand paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] he the said

Covenant by annuitant that he has power to release, &c.

FURTHER WITNESS, Assignment o annuitant's term to merge

(1) If the vendor's wife be party, add here a covenant to levy a fine, as *ante*, No. XXXI. p. 11.

Vendor's wife.

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(*annuitant's trustee*) at the request and by the direction of the said (*annuitant*) and also of the said (*vendor*) testified by their respectively sealing and delivering these presents, HATH assigned, surrendered, and yielded up, and by these presents DOTH assign, surrender, and yield up, and the said (*vendor*) and (*annuitant*) for the considerations hereinbefore expressed, and according to their respective estates and interests have and each of them hath assigned, ratified, and confirmed, and by these presents do and each of them doth assign, ratify, and confirm unto the said (*purchaser*) his heirs and assigns (1), ALL and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, and so demised to him the said (*termor*) in and by the said hereinbefore in part recited indenture of the day of as aforesaid, together with all and singular the rights, members, appendants, and appurtenances, to the same belonging, and all the estate, right, title, and interest whatsoever, of him the said (*annuitant's trustee*) in or to the same hereditaments and premises, or any part thereof, under or by virtue of the same indenture, or otherwise howsoever. [TO HAVE AND TO HOLD the said messuages, lands, hereditaments, estate, interest, and premises hereby assigned, or intended so to be, unto him the said (*purchaser*) and his heirs, for and during all the residue now to come of or in

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Term to attend.

(1) If the term is to be assigned to attend the inheritance, see variations to No. XXXVII. p. 151, *et seq.*

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the said term of years, so by the said indenture granted therein], to and for the end, intent, and purpose, that the same term and estate, and the trusts, declarations, and agreements in or by the said in part recited indenture declared of or concerning the same, may be merged and extinguished in the freehold and inheritance of the same premises, and to this further end, intent, and purpose, that until such merger and extinguishment thereof, the said *(termor)* his executors and administrators, shall and may remain and be possessed of and interested therein, IN TRUST that the same shall and may attend and wait upon the freehold, reversion, and inheritance of the said premises, to and for the use and benefit of the said *(purchaser)* his heirs and assigns. AND the said *(annuitant's trustee)* for himself, &c. (1). AND the said *(vendor)* for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, with and to the said *(purchaser)*, his heirs and assigns, in the manner following, (that is to say)(2), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore, made, done, exe-

Covenant by vendor, that the mortgagee or annuitant are seised, &c.

(1) Insert here a covenant by the annuitant's trustee, that he has not encumbered, similar to that by the mortgagee, *ante*, p. 158.

(2) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123. Covenants.

If a part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of Vol. I. No. XX. p. 269. Copyhold.

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cuted, or knowingly occasioned, suffered, or omitted by him the said (*vendor*), or the said (*annuitant, and trustee*) or either of them, to the contrary, they the said (*vendor, annuitant, and trustee*) or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully, rightfully, and absolutely seised of all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, as, of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited or set forth.

And have right to convey.

AND also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*vendor, annuitant and trustee*), or some or one of them now have or hath in himself or themselves, full power, and lawful and absolute right and title to grant, bargain, sell, release, assign, and confirm, all and singular the hereditaments and premises hereinbefore granted, released, and assigned, or otherwise assured respectively, or intended so to be, "unto and to the use and behoof of the said (*purchaser*), his heirs and assigns, in the manner aforesaid," and ac-

cording to the true intent and meaning of these presents. AND further (1) "that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon and after the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, and receive and retain the rents, issues, and profits thereof, to and for his and their own proper use and benefit," without any manner of hindrance, interruption, disturbance, claim or demand whatsoever, by or from the said (*vendor, annuitant, and trustee*), or any or either of them, or their, or any or either of their heirs, or any person or persons now or hereafter lawfully or

Vendor and Annuitant.

That the purchaser shall quietly enjoy.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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rightfully claiming or possessing, any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under or in trust for him, them, or any, or either of them. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually defended, protected, and indemnified, from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or knowingly suffered by the said (*vendor, annuitant, and trustee*), or any or either of them, or any other person or persons now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest,

Free from incumbrances.

PURCHASES.

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either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity (1). AND moreover, that he the said (*vendor*) and his heirs, and all and every person or persons, now or at any time hereafter, rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted, released, and assigned or otherwise assured respectively, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, shall and will, &c. [*proceed with this covenant for further assurance, as in No. XXXVII. p.* 164.] (2). IN WITNESS, &c.

Covenant for further assurance.

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(1) If the premises be on lease, see *ante*, No. XXXI. p. 25, n. (1). Leases.

(2) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196. Production of deeds.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* Provisoes, &c.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.* Execution, &c.

No. XXXIX.

Conveyance by a Vendor, Mortgagee *in* Fee, *and* Annuitant, *to a Purchaser.*

Variations *where the Mortgage was for a* Term.
Also *where the Conveyance is taken to Uses to bar Dower, &c. &c. as in margin below.*

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord BETWEEN (*the mortgagee*) of, &c. (being a mortgagee in fee of the hereditaments hereinafter described) (1), of the first part, (*the vendor*) of, &c. (owner of the inheritance thereof, subject to the said mortgage), of the second part, (*the annuitant*) of, &c. (an annuitant as hereinafter is recited), of the third part, (*annuitant's trustee*) of, &c.
(a trustee for a term for years for securing the said

(1) It is not essential that the characters which the parties sustain in the deed should be stated in addition to their names, but this greatly facilitates a comprehension of its scope and object where the parties are numerous, and particularly when it afterwards comes to be abstracted for a deduction of title.

annuity), of the fourth part, and (*the purchaser*) of, &c. (purchaser of the said hereditaments), of the fifth part (1). WHEREAS, &c. (*recite the conveyance to the mortgagee, as* ante, *p.* 124). AND WHEREAS the said principal sum of £ was not paid at the time, in the said in part recited indenture appointed for the payment thereof, nor hath the same since been paid, whereby the estate and interest of the said (*mortgagee*) in the said lands and hereditaments became and still is absolute at law, and redeemable only in equity. AND WHEREAS by an indenture bearing date the day of which was in the year , and made or expressed to be made between the said (*vendor*) of the first part, the said (*annuitant*) of the second part, and the said (*annuitant's trustee*) of the third part, (a memorial whereof was duly enrolled in the High Court of Chancery), the said (*vendor*) gave and granted unto the said (*annuitant*) and his assigns, for the term of his natural life, an annuity or clear yearly sum of £ , and made the same issuable out of, and chargeable upon, the said several lands and hereditaments comprised in the said hereinbefore first in part recited indenture of re-

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Recital of mortgage.

Recital of annuity.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2. n. (1).

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lease. And for better securing the payment of the said annuity, the said (*vendor*) thereby demised the same lands and hereditaments unto the said (*annuitant's trustee*), his executors, administrators, and assigns, for the term of £ years, to be thence next ensuing, if the said (*annuitant*) should so long live. And in the said indenture was contained a proviso or agreement, that the said (*vendor*) should be at liberty to repurchase the said annuity, at any time after the expiration of one year from the date of the said indenture, upon payment to the said (*annuitant*) or his assigns, of the said sum of £ , and the further sum of £ (being one half year's payment of the said annuity), or giving six months previous notice to the said (*annuitant*) of his intention to repurchase the same, in lieu of such last mentioned payment, and that then and in such case the said annuity or yearly rent charge should cease and determine, and the said (*annuitant*) should execute such release and exoneration, and cause the said term of years to be so assigned or otherwise disposed of as the said (*vendor*), his heirs, executors, or administrators, respectively might require. And whereas all interest for the said mortgage debt or principal sum of £ so lent to the said (*vendor*), upon the security of the said lands and hereditaments, has been paid up to the day of the date hereof; and the said annuity or yearly sum of £ so chargeable upon the same lands and hereditaments as aforesaid, has also been paid up to the

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day of last (*or if the case be so*), the sum of £ is now due to the said (*mortgagee*) for arrears of interest upon the said mortgage debt, &c. and the sum of £ for arrears of the said annuity or yearly rent charge of £ as the said (*vendor*) doth hereby acknowledge. AND WHEREAS, the said (*purchaser*) has contracted (1) with the said (*vendor*) for the absolute purchase of the lands and hereditaments comprised in the said in part recited indentures, free from incumbrances except as hereinafter is expressed, for the sum of £ out of which it has been agreed that the said [principal] sum of £ so secured and now remaining due on the said lands and hereditaments, by the first hereinbefore in part recited indenture, shall be paid off, and also that the sum of £ shall be paid to the said (*annuitant*) in repurchase of the said annuity or yearly rent charge of £ so chargeable thereon by the said last in part recited indenture, (no notice [or six months notice] of such repurchase having been given to the said (*annuitant*)), and the said (*mortgagee*) and (*annuitant*) at the request of the said (*vendor*), have agreed to execute such releases, conveyances, and assurances of their respective estates and interests, in the said lands and hereditaments, as hereinafter is

Contract for purchase.

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(1) If the premises were sold by *public auction*, see *ante*, No. XXXI. p. 4. n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 163. n. (4). Order of court.

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WITNESS, that in consideration of mortgage money.

expressed. NOW THIS INDENTURE WITNESSETH (1), that in pursuance of the said agreement, and for and in consideration of the sum of £ (2), of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*mortgagee*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, at the request and by the direction, and for and on behalf of the said (*vendor*), testified by his being a party to, and sealing and delivering these presents, the receipt of which said sum of £ [and that the same is in full payment and satisfaction of all principal and interest, and other monies due upon or in respect of the said hereinbefore in part recited mortgage], the said (*mortgagee*) doth hereby expressly acknowledge, [and of and from the same doth fully and absolutely acquit, release, discharge and exonerate the said (*purchaser*), and also the said (*vendor*) and their respective heirs, executors, administrators, and assigns, and likewise the said mortgaged premises by these presents: He the said (*mortgagee*) (at the request and by the direction and appointment of the said (*vendor*), tes-

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WITNESS. (1) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.*

Consideration. (2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165. n. (*6.*) *et seq.*

Copyholds. If the premises are copyhold, see Vol. I. No. XVIII.

If part copyhold, see ib. Nos. XX. XXI.

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tified as aforesaid, as to, for, and concerning the estate, right, and interest of him the said (*mortgagee*), but not further or otherwise, and as to such part or parts of the lands and hereditaments hereinafter described, as are or is comprised in the said indentures of lease and release, of the and days of , HATH granted, bargained, sold, released, and quitted claim, and by these presents doth grant, bargain, sell, release, and quit claim; and (1) for the considerations aforesaid, and in consideration of the further sum of of like lawful and current money, at the same time, and by such direction, and so testified as aforesaid, well and truly paid by the said (*purchaser*) to the said (*annuitant*) for the repurchase of the said annuity or yearly sum of as hereinafter is mentioned; and of the further sum of of like lawful money, being the residue and in full of the said purchase money or sum of at the same time well and truly paid by the said (*purchaser*) to him the said (*vendor*), the payment of which said sums of and at and by such request and direction as aforesaid, and the receipt of which said sum of and that the said several sums, making together the sum of

The mortgagee grants, &c.

And in consideration of the residue,

(1) Or the mortgagee and vendor may convey their respective estates, by separate WITNESSING parts of the deed, as in No. XXXVI. p. 123. 129.

Separate Witness.

If the mortgage be for a term of years only, see *ante*, No. XXXVII. p. 151.

Mortgage for term.

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are in full for the absolute purchase of the fee-simple and inheritance in possession of the messuages, lands, and hereditaments hereinafter described, discharged of the said principal sum of £ and all interest thereof, and of the said annuity or yearly sum of £ and of all claims and demands in respect of the same respectively, the said (*vendor*) doth hereby expressly acknowledge, [and of and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, and administrators, and also the said hereditaments by these presents.] He the said (*vendor*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL that, &c. (1) or howsoever otherwise, the said capital messuage or mansion-house, lands and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, or described; and also all other the messuages, lands, tenements, and hereditaments (if any) comprised in the indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses (2), out-

Vendor grants and confirms.

General appurtenances.

Parcels.

(1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

General words.

(2) For general words applicable in different species of property, see INDEX *voc.* GENERAL WORDS

houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common of every kind, and all] and all manner of [other rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said capital messuage, lands, tenements, hereditaments, and premises, or any part thereof belonging, or in any wise appertaining, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, except, &c. (1). (ALL which messuage or tenements, lands and hereditaments, are now in the possession of, or legally vested in the said (*purchaser*), by virtue of a bargain and sale (2) for a year to him thereof, made by the said (*mortgagee*) and (*vendor*) (for five shillings consideration), by an indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession), [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises], and all and singular the rents, issues,

Reference to the bargain and sale.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

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and proceeds thereof, to arise or become payable from the day of now last past. AND all the estate, right, title, interest, property, claim and demand whatsoever, of them the said (*mortgagee*) and (*vendor*) respectively, (each granting separately as aforesaid, and not the one for the other, or the estate, right, title, or interest, of the other of them), in, to, or respecting the said hereditaments and premises or any part thereof: [TOGETHER with all deeds, muniments, and writings whatsoever, in any wise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of them the said (*mortgagee*) and (*vendor*) respectively, or of their respective heirs, executors, or administrators, or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity, [and true and attested copies (duly stamped), when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all deeds, muniments, writings (not being of record), so in his or their custody or power, or which can or may be procured without action or suit as aforesaid, and in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies,

Grant of title deeds.

And copies.

Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser,

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when first required, to be made and delivered at the expense of the said (*vendor*), his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same]. To HAVE AND TO HOLD (1) the said messuages, lands, tenements, hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereby granted, and released, or otherwise assured, or intended so to be, unto the said (*purchaser*), his heirs or assigns, "to and for the use and behoof of him the said (*purchaser*), his heirs and assigns for ever" (2), freed and absolutely discharged and exonerated of and from the said principal sum of £ and all interest thereof, and also of and from the said annuity or yearly rent charge of £ and all arrears thereof, and of and from all other charges and in-

To HOLD to the purchaser in fee.

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but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111. Habendum.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say, Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

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cumbrances whatsoever, except as hereinafter is expressed. AND the said (*mortgagee*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*) hath not at any time heretofore [either alone or together with the said (*vendor*), or any other person or persons], made, done, executed, or knowingly suffered, or omitted, nor caused or procured to be made, done, executed, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended so to be, or any estate or interest therein, are or is, or can or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever. AND THIS INDENTURE FURTHER WITNESSETH, [*add release of the annuity, &c. &c. as in the preceding Precedent, No. XXXVIII. p.* 170.] AND the said (*vendor*), for himself, his heirs, executors, and administrators, DOTH hereby covenant (1) and declare, to and with the said (*purchaser*), his heirs and assigns, in the manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed,

Covenant by mortgagee that he has not incumbered.

FURTHER WITNESS, Annuitant releases the annuity.

Covenant by vendor, that the mortgagee or annuitant are seised, &c.

Covenants.

(1) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

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or knowingly occasioned or suffered, by him the said (*vendor*) (1), [or by them the said (*mortgagee, annuitant, and trustee*), or any or either of them, to the contrary], they the said (*vendor and mortgagee*), or one of them, at the time of the sealing and delivery of these presents, are or is lawfully and rightfully seised of, or well entitled to, all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be as aforesaid, as of, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited

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(1) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement; add, Vendor entitled by devise, &c.

"Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

If by descent, add, or by descent.

"Or any of his ancestors,"

And see Vol. I. No. XV. p. 141, n. (39.); and No. XVI. p. 178, *et seq.* in notes.

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And have right to convey.

or set forth, save only and except, &c. (1). AND also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*vendor, mortgagee, annuitant, and trustee*), or some of them now have in themselves, or one of them hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, assign, and assure all and singular the said hereditaments and premises, hereinbefore granted, bargained, sold, and assigned, or otherwise assured respectively, or intended so to be, unto (2), "and to the use and behoof of the said (*purchaser*), his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these

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Except, &c.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Uses to bar dower.

(2) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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presents. And further, "that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon and after the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their rights, members, appendances and appurtenances, and receive and retain the rents, issues, and profits, thereof, to and for his and their own proper use and benefit," without any manner of hindrance, interruption, claim, or demand whatsoever, by or from the said (*vendor, mortgagee, annuitant, and trustee*) or any or either of them, or their, or any or either of their heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein from, through, under, or in trust for him, them, or any or either of them (1). And that free and clear, and fully and clearly and absolutely discharged and exonerated, or by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents,

That the purchaser shall quietly enjoy.

Free from incumbrances.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 199. n. (1).

Vendor entitled by devise, &c.

If the premises be on lease, see as referred to, *ante*, No. XXXI. p. 25, notes.

Leases.

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uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time hereafter shall or may be made, created, executed, occasioned, or knowingly suffered by the said (*vendor, mortgagee, annuitant, and trustee*), or any or either of them, or any other person or persons claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them (1), or by or through his, their, or any or either of their acts, means, or defaults (2). AND moreover, [*Add covenant for further assurance* (3)]. IN WITNESS (4), &c.

Vendor entitled by devise, &c.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 199, n. (1).

Leases.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

(3) See *ante*, p. 164.

Production of deeds.

(4) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted

when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

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*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.*, also 4 Elem. Conv. 2d edit. p. 88, *et seq.*

Execution, &c.

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No. XL.

Conveyance to a Purchaser by Trustees *under a* Deed of Trust to sell.

Variations *where the Vendors are* Devisees *in trust to sell.*

Also where the Owner of the Estate, or Persons entitled to the Purchase money join.

And where the Purchaser is desirous of taking to uses to bar Dower, &c. &c. *as in margin below.*

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord .

Parties. BETWEEN (*the trustees for sale*) of, &c. (being trustees for sale of the hereditaments hereinafter described) of the first part, (*the owner of the inheritance*) of, &c. (the beneficial owner of the same hereditaments) of the second part, (1) and (*the purchaser*) of, &c. (a

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Cestui que trust or owner of the inheritance not necessary party.

(1) Where an absolute power of sale is given to the trustees, with proper clauses for exonerating the purchaser from seeing to the application of the purchase money, it is not necessary that the owner of the inheritance should be a party; but to guard against the consequences of any defect in the deed of conveyance to the trustees, his concurrence is generally required; and where he has not entered into covenants

purchaser thereof) of the third part (1). WHEREAS

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with the trustees for the title, it is proper that he should be made a party for the purpose of entering into those covenants with the purchaser.

Neither is it now held to be necessary to make the heir at law a party, although disinherited by the devise to the vendors. See Cotton *v.* Wilson, 3 P. Wms. 190. Wakeman *v.* Duchess of Rutland, 3 Ves. jun. 233. Where, however, his concurrence can be obtained, it is very satisfactory, as tending to quiet the purchaser's title, by precluding the heir from disputing the validity of the devise, and preventing objections being raised on a future sale.

Heir at law not necessary party.

Where the trustees are *devisees* under a will, it is usual in practice, (and more particularly where the heir at law does not join), to make all persons who are presumptively entitled to any considerable part of the purchase money, after payment of debts, parties to the conveyance to the purchaser, and covenant for the title, &c. and as the persons who are entitled to the money arising from the sale are the substantial and beneficial owners of the estate, this practice seems founded on sufficient reason, but it does not appear to have yet received that sanction from the courts which could be wished.—See Hord *v.* Griffith, 3 Atk. 264; Wakeman *v.* D. of Rutland, 3 Ves. jun. 233, 508; 8 Brow. P. C. 145; Bp. Winton *v.* Beaver, 3 Ves. jun. 314; and see 4 Cru. Dig. 92. Indeed the propriety of joining in a conveyance from trustees, the parties intitled to the money, was doubted by Lord Loughborough, in the case of Wakeman *v.* Duchess of Rutland, 3 Ves. jun. 233; in which he seems to insinuate, that it takes away the purchaser's indemnity arising from the declaration that the receipt of the trustees shall be a sufficient discharge. But quære this; and the practice does not accord.

Cestui que trusts of land sold under a will should be parties to the conveyance.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2, n. (1).

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by indentures of lease and release (1), bearing date respectively on or about the and days of , which was in the year . The release being of parts, and made or expressed to be made between the said (*owner of inheritance*) of the one part, and the said (*trustees*) of the other part; the messuages, lands, and

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On sale for payment of debts and legacies, creditors and legatees should be parties, if purchaser not exempt from seeing to application of purchase money.

And where in a devise, &c. for payment of debts and legacies, the purchaser was not exempted from seeing to the application of the purchase money, Mr. Bradley's mode was to make all the creditors and legatees parties to the deed if the estate was sold in the entirety; and where it was sold in lots he conveyed the whole estate by the creditors and legatees to a trustee to the use of the respective purchasers, and took separate receipts from them for each purchaser, see Brad. Points 71, pl. 147, &c. or the estate may be so conveyed with a declaration that the receipt of the trustee shall be a discharge; and he only be made a party to the conveyances to the respective purchasers. See Sug. Vend. & Pur. 386, and vid. Hardwicke v. Maynard, 1 Ambr. 109. Lord Braybroke v. Jurkip, 8 Ves. jun. 417.

Deficiency of personalty.

And when the trusts of the will are to sell for the purpose of making up the deficiency of the personal estate, and the purchaser is not exempted from seeing to the application of the trust money, or inquiring into the deficiency, Mr. Fearne used to recommend that the deed should recite the deficiency, but quære, as to the liability of a purchaser to ascertain such deficiency. And vid. Co. Lit. 290, b. n. 2.

Devisees.

(1) Where the vendors sell under the trusts of a will instead of a deed, recite such will.

"WHEREAS (*the testator*) late of &c. deceased, in and by his last will and testament in writing, bearing date on or about the day of and duly executed and attested, as by law is required, for devising real estates of inheritance, gave and devised unto the said (*trustees*) and their heirs, ALL, &c. upon trust, that they the said (*trustees*) or the survivor of them, or the heirs of such survivor, or their or his assigns, should," &c. *as in the text.*

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Recital of conveyance to the trustees.

hereditaments, hereinafter described (1), and intended to be hereby granted and released, were (amongst other lands and hereditaments, *if the case were so*) for valuable considerations therein mentioned, conveyed and assured unto and to the use of the said (*trustees*) their heirs and assigns, upon trust, that they the said (*trustees*) or the survivor of them, or the heirs of such survivor, or their or his assigns, [or other the trustees or trustee for the time being of the said hereditaments under or by virtue of a proviso in the said indenture of release contained,] should or might, when and as they or he should think proper (2), make sale, and dispose of the same, or so much and such parts thereof as they or he should deem expedient, without the concurrence of or any further power or authority from the said (*owner of the inheritance*) or his heirs, (unless the same should be expressly required by the trustees or trustee for the time being, or any purchaser or purchasers thereof), either absolutely and in fee-simple, or for any term or terms of years, or for life, and either together or in parcels, and by public sale or private contract, at their or his discretion, for such price or prices, or sum or sums of money as to them or him should seem

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Parcels.

(1) If all the lands, &c. conveyed to the trustees are sold to the same purchaser, they may be set out in the recital of the deed of trust, and referred to in the operative part of the purchase deed.

(2) Pursue the words of the deed or will, directing the trustees to sell and dispose of the estate.

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reasonable; and should or might, and they were thereby fully authorized and empowered to sign, seal, deliver and execute, all proper and sufficient conveyances and assurances to any purchaser or purchasers, of the same hereditaments or of any part thereof; and it was thereby expressly declared, that the receipts or receipt of the said trustees, or of the survivor of them, his heirs or assigns, or of other the trustees or trustee for the time being acting in the execution of the trusts thereby created or declared, should be good and effectual discharges to any purchaser or purchasers, his, her, and their heirs, executors, administrators, and assigns, for the purchase money which in any such receipt or receipts should be expressed to be received; and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, should not afterwards be in any wise answerable or accountable for any loss, misapplication, or non-application of the same or any part thereof; or liable to see to the application of the same, or to inquire into the necessity or occasion of such sale in any manner whatsoever; and it was thereby further declared, that the messuages, lands, and hereditaments, which should be so sold and conveyed, should thenceforth be and remain to the use of the purchaser or purchasers thereof, and his, her, and their heirs and assigns, or executors and administrators, as the case might require, in such manner as in the conveyance or respective conveyances of the same should be expressed, freed and absolutely dis-

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charged of and from all and every the trusts, intents, and purposes in the said indenture declared or expressed concerning the same. (1) AND WHEREAS the said (*trustees*) in pursuance of the trusts and authority vested in them by the said in part recited indenture of release (*or* will) in that behalf, and in exercise thereof to the best of their discretion and judgment, caused the messuages, lands, and hereditaments, hereinafter described, being (or being part of, *as the case may be*) the messuages, lands, and hereditaments, comprised in the said hereinbefore in part recited indenture (*or* will) to be put up to sale by public auction (2) on the day of last past, at which sale the said (*purchaser*) became and was declared to be the highest bidder for, and purchaser of the same, at the sum of £ and thereupon paid into the hands of the auctioneer

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(1) If the trustees are devisees in trust, recite

Devisees.

"And whereas the said (*testator*) departed this life on or about the day of without revoking or altering his said will, so far as the same respected such devise of the said hereditaments to the said (*trustees*) as aforesaid.

(2) As trustees usually dispose of estates conveyed to them for sale, by *public auction*, in order that no doubts may arise with respect to the sale being fair and *bona fide*, and that by raising a competition between the bidders, the estate may fetch its utmost value, I have adapted this precedent to that circumstance; but if the sale were in fact made by private contract, the recital of such contract may be made to accord with the corresponding parts of the next precedent, No. XLI. p. 232.

Sale at discretion of trustees and executors should be by public auction.

If the sale were by private contract, state the payment of the consideration money, as in the next precedent, No. XLI. p. 234.

Sale by private contract.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4).

Order of court.

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the sum of £ by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. AND WHEREAS the said (*purchaser*) hath requested that the said hereditaments may be conveyed to him in the manner hereinafter expressed; and the said (*owner of inheritance*, &c.) at the request of the said (*trustees*) and for the greater satisfaction of the said (*purchaser*) has agreed to join in the conveyance to him thereof. NOW THIS INDENTURE WITNESSETH (1), that in pursuance and completion of the said purchase, and in consideration of the sum of £ (2), so paid by the said (*purchaser*) into the hands of the said auctioneer, at the time of the said sale, by way of deposit, and in part of the said purchase money, or sum of £ as aforesaid, and also for and in consideration of the further sum of £ of lawful current money, of that part of the United Kingdom of Great Britain and Ireland, called England, being the residue and in full of the said purchase money, to them the said (*trustees*) [or one of them, by and with the consent and direction of the other of them, testified by his being a party hereto] in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and

WITNESS, That in consideration of the purchase money.

WITNESS. (1) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.*

Consideration. (2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6). *et seq.*

Copyholds. If the premises are copyhold, see Vol. I. No. XVIII.

If part copyhold, see ib. Nos. XX. XXI.

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delivery of these presents, the payment of which said sum of £ by way of deposit, and the receipt of which said sum of £ making together the said sum of £ and being in full for the absolute purchase of the fee-simple and inheritance of and in the lands and hereditaments hereinafter described, and to be by them applied and disposed upon and for the trusts and purposes of the said in part recited indenture, the said (*trustees*) do hereby acknowledge, [and of and from the same and every part thereof, do and each of them doth acquit, release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said messuages, lands, and hereditaments (1), by these presents], they the said (*trustees*) pursuant to and in execution of the trusts and authorities reposed in them by the said in part recited indenture of release (*or* will), [and of all or any other trusts, or authorities (2), in any wise enabling them in this behalf,] HAVE and each of

The trustees bargain, sell, &c.

(1) Where the sale is for payment of debts or legacies, and the creditors or legatees (*or a trustee for them*) are not made parties to the deed, and the purchaser is bound to see to the application of the purchase-money, it will be proper that he should see the debts and legacies paid, and take receipts for the sums paid to them respectively; and if the estate be sold in lots, each creditor, upon receiving the amount of his debt, is sometimes required to give a receipt to each purchaser, and one also to the trustees. See Brad. Points, pl. 73, and vide Sugd. Vend. and Pur. 73. 386. and Lloyd *v.* Baldwin, 1 Ves. sen. 173.

Where cestique trusts not parties.

(2) See the reason of inserting these words, *ante*, p. 91, n. (1).

But where the trustees, as in this case, have a bare trust estate, and cannot have any other authority to convey than

PURCHASES. them as to his estate and interest, HATH bargained, sold, aliened, and released, and by these presents Do, and each of them DOTH bargain, sell, alien, and release, and by way of conveyance only, and not for or by way of warranty of title, DO and each of them DOTH grant and confirm, AND for the considerations aforesaid, [and in consideration of the sum of five shillings of like lawful and current money, to the said (*owner of inheritance*) in hand paid by the said (*purchaser*), at the time aforesaid, the receipt whereof is hereby acknowledged,] He the said (*owner of inheritance*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify and confirm, unto the said (*purchaser*) and his heirs, ALL (1), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in the indenture of bargain and sale for a year, hereinafter particularly referred to: TOGE-

Trustees for Sale.

And owner grants and confirms.

The parcels.

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that derived from the trust deed, these words seem wholly nugatory.

Parcels. (1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128. n. 13; No. XVI. p. 172; and No. XXVII. p. 485, n. (2). and *ante*, No. XXXI. p. 6. n. (2).; also 4 Elem. Conv. 2d edit. p. 104. And if the whole of the lands comprised in the deed of sale be sold to the present purchaser, they may be set out in the recital of such deed, and described by reference to it, instead of being set out here at length.

THER with all [houses (1), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments and premises, or any part thereof, belonging, or in any wise appertaining, [or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (2). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of or legally vested in the said (*purchaser*) by virtue of a bargain and sale (3) to him thereof made by the said (*trustees and owner of inheritance*) (for five shillings consideration) by indenture bearing date on the day next before the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture,

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Trustees for Sale.

General appurtenances.

Reference to bargain and sale for a year.

(1) See general words, applicable to different kinds of real property, INDEX *voce* GENERAL WORDS. General words.

(2) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

(3) See the form of this bargain and sale, Vol. I. No. XIII. p. 110; and No. XIV. p. 117. Bargain and sale.

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and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of them the said (*trustees and owner of inheritance*) and every of them respectively, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, writings and evidences of title whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of them the said (*trustees and owner of inheritance*) or any or either of them, their or his heirs or assigns, or of any person or persons from whom they, or any or either of them, can or may procure the same, without action or suit at law or in equity, and true and attested copies duly stamped, when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences, (not being of record) so now, or hereafter being in his, their, or any or either of their custody or power as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or

Grant of title deeds.

And copies.

property of equal or greater value (1), such copies when first required, to be made and delivered by and at the expense of the said (*trustees*) or the said (*owner of inheritance*) their or his heirs, executors, or administrators, or of the said trust estate; but all future copies to be made and taken at the expense of the person or persons requiring the same. TO HAVE AND TO HOLD (2) the messuages, lands, tenements, hereditaments, and other the premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendances and appurtenances, unto the said (*purchaser*) and his heirs "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (3)." AND the said (*trustees*) for themselves, severally and respectively, and for their several and respective heirs, exe-

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To HOLD to the purchaser in fee-simple.

Covenant by the trustees that they have not incumbered.

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(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

(3) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3.)

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cutors, and administrators, [and not the one for the other of them, or the heirs, executors, or administrators, or the acts, deeds, omissions or defaults, of the other of them, but each for himself only, and his own heirs, executors, and administrators, respectively, and his and their own respective acts, deeds, and defaults (1)], do severally covenant, declare, and agree, with and to the said (*purchaser*) his heirs and assigns, by these presents,

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Covenants for title, &c. by trustees or executors should be worded in several.

(1) A covenant thus worded is clearly and expressly *several*, and cannot by any possibility be construed to make either of the trustees answerable for the acts of the other; but I have known it more satisfactory to trustees, where they have been suspicious of each other's integrity, that the covenant against incumbrances should be more pointedly separate; and it will often be found necessary, for the sake of ease and expedition in business, to remove the scruples of a client, however void they may be of any reasonable foundation; in this case the covenant may be worded thus—

Several covenant by trustees.

"And the said (*one of the trustees*) DOTH hereby for himself, his heirs, executors, and administrators, covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*trustee*) hath not at any time heretofore either alone or together with the said (*other trustee*) made, done, executed, or knowingly occasioned, suffered, or omitted. And the said (*other trustee*) DOTH hereby for himself, his heirs, executors, and administrators, covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*trustee*) hath not at any time heretofore, either alone or together with the said (*other trustee*) made, done, executed, or knowingly occasioned, suffered or omitted, any act, deed, &c." *as above.*

Or,

"And each of them the said trustees for himself, his heirs, executors, or administrators, by these presents, DOTH, &c." *as above.*

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that they the said (*trustees*) have not nor hath either of them, (each covenanting separately as aforesaid), at any time heretofore either together or separately made, done (1), executed, or knowingly

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Further assurance by trustees.

(1) This covenant by the trustees, that they have not incumbered, is the only covenant relating to the title, which they can, as such, be required to enter into; see Wakeman *v.* Duchess of Rutland, 3 Ves. jun. 233, 504. 8 Brow. P. C. 45, s. c. 3 Pow. Prec. Conv. 209. A covenant for further assurance is sometimes added, but this does not seem necessary, because, should any estate still remain in them, which might render any further assurance by them necessary, they would, as to such estate, continue trustees for the beneficial owner, and be liable to be called upon in that character, to transfer such estate without any previous covenant for that purpose; and as it has been held, that under a covenant for further assurance, a vendor may be required to convey any title he may have acquired, even subsequently to the conveyance, and although purchased *bonâ fide* for a valuable consideration, Taylor *v.* Debar, 1 Ch. Ca. 274. 2 *ibid.* 212. Seabourne *v.* Rimell, 2 Vern. 11. it may be considered dangerous for them to enter into such a covenant, unless it be expressly restrained to further assure the title than in them, or unless they are beneficially interested in the surplus of the purchase money after satisfaction of the trusts.

But although trustees cannot regularly be required to covenant further than as against defects arising from their own acts, yet cases sometimes occur where they may reasonably be expected, or may consent, to go further than this, (as where they hold an estate subject to a charge from which other parts of the same estate are to be indemnified), in which case some qualification should be added to prevent their liability beyond what the circumstances demand, as—

"PROVIDED ALWAYS nevertheless that, without prejudice to the effect of the last covenant as against the assigns of the said messuages, lands, tenements, and hereditaments comprised in the said lot, or any part or parcel thereof, that the said (*trustee*), his heirs, executors, or administrators shall

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occasioned, suffered, or omitted, nor caused or procured to be made, done, executed, or knowingly occasioned, suffered, or omitted, nor been parties or privies, or party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, or any part thereof, or any of the appurtenances thereto, [or the estate or interest intended to be by these presents granted and released, or otherwise assured therein], are, or is, or can or may be impeached, charged, incumbered, or prejudicially affected, in any wise howsoever (1).

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not be liable to any action or suit upon or by reason or means of the said covenant, after the said (*trustee*) and his heirs shall have ceased to be a trustee or trustees of the said premises comprised in the said lot, nor during the time of his or their being a trustee or trustees thereof, beyond the account of such rents and profits of the same which shall have come to his or their hands, as according to the true intent and meaning of these presents ought to have been applied in payment of the said annuity or rent-charge."

York.

(1) If the lands be situated in the county of York, or other place within the operation of the statute 6 Ann. c. 35, or 8 Geo. II. c. 6, which enact that the words "grant, bargain, and sell," shall be construed to express covenants from the bargainor, that he is seised in fee of an indefeasible estate of inheritance, free from incumbrances, and for quiet enjoyment, and further assurance, unless restrained by express words in the deed, it will be proper to add here a proviso,

Restriction of "the words

"That it is hereby declared and agreed by and between

AND the said (1) (*owner of inheritance, heir-at-law of testator, or person entitled to the purchase money*) for himself, his heirs, executors, PURCHASES. *Trustees for Sale.*

all the said parties to these presents that the words grant, bargain, and sell, or either of them, hereinbefore made use of by the said (*trustees*) shall not be construed by virtue of any statute or rule of law whatsoever, to extend to an implied or other warranty, or to a covenant on the part of them, or either of them, for the title to, or for quiet enjoyment or further assurance, of or respecting the lands and hereditaments by these presents granted, released, or otherwise conveyed, or so mentioned or intended to be as aforesaid, or any of them, but the same shall be deemed, and were intended to extend and operate, to pass their and each of their estates and interests only in the said premises, and no further or otherwise." grant, bargain, and sell."

(1) As trustees can only be required to covenant against their own incumbrances, see *ante*, p. 217, n. (1), it is the practice to make the *celles que trusts* or the persons entitled to the purchase money after payment of debts, &c. enter into the usual covenants for the title, according to their respective estates and interests, but where the sale is by trustees under a will, and the money is to be applied in payment of debts, &c. which will exhaust the whole of the purchase money, or where the sale is under a decree for like purposes (in which case a sale is generally made in the first instance, before the debts are known) the purchaser is not entitled to covenants for the title, see Wakeman *v.* Duchess of Rutland, 3 Ves. jun. 233, 504. 8 Brow. P. C. 145. 3 Pow. Prec. 209. And where the purpose of the sale is to make up the deficiency of any of the testator's personal estate, and the purchaser is not exonerated from inquiring into the reality of such deficiency, (sed quære this, and vide Co. Lit. 290, b. n. (1)), Mr. Fearne has recommended that a covenant should be inserted on the part of the trustees, or *celles que trusts*, that such deficiency actually existed, and to produce accounts and vouchers to the purchaser and his heirs, to sustain his title, vid. F. P. Wks. 123, n. 4 Com. Dig. 94. Covenant by celles que trusts.

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Covenant by owner of the inheritance to the title.

and administrators, DOTH hereby covenant and declare, to and with the said (*purchaser*), his heirs and assigns, in the manner following (1), (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*owner of inheritance*, or, &c.) (2), to the contrary, they the said (*owner of the inheritance and trustees*), or some or one of them, at the time of the sealing and delivery of these presents, now are or is lawfully, rightly, and absolutely seised in their or his demesne as of fee, of all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or intended so to be, as of or for a good, perfect, clear, and

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Covenants.

(1) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Devisees.

If the sale is by devisees for sale this covenant of seisin may be omitted; but if the owner of the inheritance have already covenanted with the trustees, their heirs and assigns, with respect to the title, &c. in the conveyance previously executed to them, and such conveyance is delivered over to the purchaser, they may likewise be omitted.

Vendor entitled by devise, &c.

(2) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

"Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

or by descent.

If by descent, add,

"Or any of his ancestors,"

and see Vol. I. No. XV. p. 141, n. (39); and No. XVI. p. 178, *et seq.* in notes.

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indefeasible estate of inheritance, in fee-simple in possession, without the said premises or estates being subject or liable to any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, save only and excepted (1). AND also that for and notwithstanding any such act, deed, matter, or thing (as aforesaid) they the said (*trustees*) and (*owner of inheritance*), or some or one of them, now have or hath in themselves, or himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto " and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents" (2). AND further, that " he the

And that he and the trustees have right to convey.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Except, &c.

(2) If the conveyance is to be made to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

" Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

" And further, that all and singular the same hereditaments and premises, with their and every of their respective

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That the purchaser shall quietly enjoy.

said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, privileges, members, and appurtenances; and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit," without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from them the said (*trustees*) and (*owner of inheritance*) or any or either of them, or their or any or either of their heirs, or any person or persons now or hereafter rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them (1). AND

Free from incumbrances.

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rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes, hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

Vendor entitled by devise, &c.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 220, n. (2).

Leases.

If the premises are on lease, see *ante*, No. XXXI. p. 25.

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that free and clear, and freely, clearly, and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*owner of inheritance*) and (*trustees*), or some or one of them, their or his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all [former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or knowingly suffered by the said (*trustees*) and (*owner of inheritance*), or any or either of them (1), or any other person or persons now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through,

(1) If the vendor took otherwise than by descent, see *ante*, p. 220, n. (2).

Vendor taking otherwise than by descent.

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under, or in trust for him, them, or any or either of them, or by or through their, or any or either of their acts, defaults, means, consent, or privity (1). AND moreover, [*add covenant by the owner of the inheritance for further assurance*] (2). †IN WITNESS (3), &c.

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(1) If the premises be on lease, see *ante*, No. XXXI. p. 27.

(2) For the form of this covenant, see *ante*, No. XXXVII. p. 164.

Premises charged with debts, &c.

(†) If part of an estate charged with the payment of debts, legacies, &c. is sold, the incumbrances remaining either wholly or in part undischarged, there should be a declaration at the end of the conveyance, that these incumbrances shall continue chargeable upon the premises remaining unsold, "to the intent and purpose that the purchased lands may be exempted, exonerated, and indemnified against these incumbrances;" and if these are by will to be raised under the trusts either of the legal estate or of a term of years, the trustee must join in *conveying the fee* to the purchaser, or must assign the term to his trustee to attend the inheritance, and the deed must contain a declaration "that the trustees shall stand seised or possessed of that part of the estate which remains unsold; in trust by the ways and means in the will mentioned to raise and levy the annual and other sums of money thereby directed to be raised, and to apply the same according to the trusts of the will, to the intent that the purchased premises may thereby be discharged and indemnified from those incumbrances.

And if there be no estate vested in the trustee as to the part remaining unsold, a term should be limited in that part to a trustee nominated by the purchaser, in trust to raise and pay those incumbrances, and to indemnify the purchaser, and the lands purchased by him, with the usual proviso, that when all the trusts of the term are performed or satisfied it shall cease.

Application of purchase money.

If the purchaser be not indemnified by the clauses of the trust deed, from seeing to the application of the purchase money, a proviso may be added to indemnify him against its misapplication, as *post*, rider (A), p. 226.

Production of deeds.

(3) If any of the title deeds are retained by the vendor or his

predecessors in title, add a covenant for their production or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196. PURCHASES.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* *Trustees for Sale.* Provisoes, &c.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.* Execution, &c.

(A) Variation *where the Purchaser is not exempted from seeing to the Application of the Purchase Money.*

Indemnity against application of purchase money.

"AND WHEREAS some doubts have arisen respecting the competency of the authority vested in the said *(trustees)* by the said in part recited indenture to give a complete discharge to a purchaser of the premises, intended to be hereby conveyed, so as to exonerate him from seeing to the application thereof, the said *(trustees)* have proposed to give, and the said (*purchaser*) has agreed to accept of such covenant for the due application of the same, as hereinafter is expressed.

Covenant by trustees duly to apply the purchase money.

NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said last mentioned agreement, and in consideration of the premises, they the said (*trustees*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, Do and each of them DOTH covenant, promise, grant, and agree, with and to the said (*purchaser*) his heirs and assigns, by these presents in manner following, (that is to say) that they the said (*trustees*) or some or one of them, their, or some or one of their heirs, executors, or administrators (1), shall and will forthwith pay and apply the said sum of £ so paid to them by the said (*purchaser*) for the purchase of the said premises, as aforesaid, in or towards the payment of the said several portions and other sum and sums of money, so directed to be paid and applied in or by the said in part recited indenture, and in and for answering other the lawful trusts and purposes of the same indenture, AND further that they, or some or one of them, shall and will at all times, and from time to time, within the space of years now next hereafter at the reasonable request of the said (*purchaser*) his heirs or assigns, state and set forth in writing, the

(1) See a more several form of covenant by trustees, *ante*, p. 215 and 216, n. (1).

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manner and purposes in and for which such purchase-money hath been paid or applied, and produce and show forth receipts or other sufficient vouchers and documents of or concerning the payment and application thereof, to the end that it may appear, whether and to what extent the said (*purchaser*) his heirs, executors, and administrators, and the said hereditaments and premises are then actually freed and discharged from the trusts of the same indenture. AND FURTHER, that they the said (*trustees*) or some or one of them, their, or some or one of their heirs, executors, or administrators, shall and will from time to time, and at all times, for the space of years next hereafter, at his and their own proper costs and charges, defend and absolutely save harmless, and keep indemnified the said (*purchaser*) his heirs, executors, administrators, and assigns, and also all and singular the said hereditaments and premises, and every of them, of, from, and against all and every the trusts, declared or expressed in and by the said in part recited indenture of or concerning the same premises or any of them, and of and from, and against all and every or any misapplication or non-application of the said purchase-money, or any part thereof. AND ALSO of, from and against all and every action and actions, suits, costs, charges, losses, damages, and expenses whatsoever, whether already incurred, instituted, or depending, or which shall or may hereafter be incurred, instituted, or be depending or had or recovered, against them the said (*trustees*) or any or either of them, their, or any or either of their heirs, executors, or administrators, or the said (*purchaser*) his heirs, executors, administrators, or assigns, for or on account of the said trusts, portions, sum or sums of money, or any of them, or other matter or thing in any wise relating thereto, or to any of them." IN WITNESS, &c.

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No. XLI.

Conveyance by Trustees *by virtue of a* Power of Sale *contained in a* Marriage Settlement *or* Will [*and* celles que trusts] *to a Purchaser* (1).

Also *where the Conveyance is made to uses to bar* Dower, &c. &c. *as in margin below.*

THIS INDENTURE, of parts, made the day of , in the year of the reign, &c. and in the year of our Lord .

Parties. BETWEEN (*the trustees*) of, &c. of the first part, *the tenants for life, or other celles que trusts* (2), of, &c. of the second part, and (*the*

Life. (1) If the subject of the conveyance be an estate for *life*, see Vol. I. No. XXIII.

Reversion, &c. If a *remainder* or *reversion*, see *ib.* No. XXIV.

Equity of redemption. If an *equity of redemption*, see *ib.* No. XXV.

Moiety, &c. If a *moiety* or other *undivided part*, see *ib.* No. XXVI.

Celles que trust. (2) The celles que trusts are not necessary parties, where the purchaser discharged from seeing to the application of the purchase money, unless their consent is expressly required by power; they are however usually made parties for the reasons given in a preceding note, see *ante*, No. XL. p. 204, n. (1).

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purchaser) of, &c. of the third part (1). WHEREAS by indentures (2) of lease and release, bearing date respectively on or about the and days of , which was in the year of our Lord , the release being of parts, and made or mentioned to be made between, &c. (and purporting to be a settlement made in contemplation of a marriage then intended, and which was afterwards solemnized between, &c.) the lands and hereditaments hereinafter described, were (amongst other hereditaments) conveyed or assured unto the said (*trustees*) and their heirs, to the uses, upon the trusts, for the ends, and purposes, and subject to the powers, provisoes, declarations, and agreements therein declared or expressed, concerning the same. And in the said indenture was contained a proviso, declaration and agreement that (3) it should be lawful for the said (*trustees*) and the survivor of them, and his heirs, or other the trustees or trustee for the time being of the said lands and hereditaments, at any time or times thereafter, at the request, or with the consent of the said (*cestuis que trusts*)

Recital of marriage settlement, in which the power of sale is contained.

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(1) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

"Being a trustee named and appointed by and on behalf of the said *(purchaser)* for the purposes hereinafter mentioned, of the part."

(2) If the power of sale be created by will, recite such will, agreeably to the form given, *ante*, No. XL. p. 206, n. (1.)

Devisees.

(3) Recite so much of the power *verbatim* as authorises the trustees to sell and convey in the manner proposed.

Recital of power.

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during their joint lives, and after the decease of either of them, at the request, or with the consent of the survivor of them, such request or consent to be signified by writing, under their, his, or her hands and seals, or hand and seal, to sell and dispose of, either absolutely or otherwise, the whole or any part of the said lands and hereditaments and the fee-simple and inheritance thereof, or other estate or inheritance therein, either together or in parcels, and either by public or private sale, for such price or prices in money as to them or him should seem reasonable; and for the purpose of effectuating any such sale or disposition, it was thereby declared that it should be lawful for the said trustees or trustee with such consent and so testified as aforesaid, by any deed or deeds, or other instrument or instruments in writing, to be sealed and delivered by them or him in the presence of, and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every, or any of the uses, trusts, powers, and provisions thereby limited, declared, or expressed, of or concerning the hereditaments and premises which should be so sold or agreed to be given in exchange as aforesaid (except only and without prejudice to subsisting leases, if any, which might have been made under and by virtue of the power for that purpose thereinbefore contained) and by the same or any other deed or deeds, instrument or instruments in writing, to be by them or him sealed, delivered and attested as aforesaid, to limit, declare, direct, and appoint,

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or create any new or other use or uses, trust or trusts, estate or estates, on or concerning the said hereditaments and premises so sold or agreed to be given in exchange, in such form and manner as should be thought necessary or expedient for the completing and perfecting such sales respectively, and for conveying the said lands and hereditaments to and for such use or uses, upon such trusts, and for such ends, intents and purposes as the purchaser or purchasers thereof should direct or require; and it was further agreed and declared, that upon every such sale, for a valuable consideration in money, the purchase-money thereof should be paid into the hands of the said (*trustees*) or of one of them or of other the acting trustees or only acting trustee for the time being, of the said trust premises, and that the receipts or receipt of such trustees or trustee should be a sufficient discharge to any purchaser or purchasers for such purchase money, or for so much thereof as in such receipt or receipts should be acknowledged or expressed to be received, and that he or they should not afterwards be answerable for any misapplication or non-application of such purchase money, or of any part thereof; and further that all and every the lands and hereditaments to be so sold should thenceforth be and remain unto, and be holden and enjoyed by the person or persons to whom or to whose use the same should be conveyed, freed, exonerated and absolutely discharged from all and every the uses, trusts, estates, provisoes, and limitations, by the said indenture of

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Recital of contract for the purchase. AND WHEREAS the said (*trustees*) with the consent and approbation of the said (*celles que trusts*) testified as hereinafter mentioned, have contracted (1) with the said (*purchaser*) for the absolute sale to him of the inheritance in fee-simple of the lands and hereditaments hereinafter described, being the lands and hereditaments (*or* part and parcel of the lands and hereditaments, *as the case may be*) comprised in the said in part recited indenture of release, free from all charges and incumbrances whatsoever, except only as hereinafter is mentioned, at the sum of £. and for the greater satisfaction of the said (*purchaser*) the said (*celles que trusts*) have agreed to join in the conveyance to him thereof in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, (2)

WITNESS. The trustees revoke the old uses. that in pursuance of the said contract and agreement, and for enabling the said (*trustees*) to carry the same into effect, and by virtue and in exercise of the power and authority given to or vested in them in or by the said hereinbefore in part recited

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Auction. (1) If the sale were by public auction, make the recital of the contract and the payment of the purchase money, conformably to No. XXXI. p. 4. n. (1).

WITNESS. (2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98, &c.

indenture of release, of the day of PURCHASES.

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[and of all and every other power or powers, authority or authorities whatsoever, in any wise enabling them or either of them hereunto], they the said (*trustees*) by and with the consent, approbation, and direction of the said (*celles que trusts*) respectively testified by their severally being parties to, and signing and sealing these presents (1) HAVE revoked, (2) determined, and made void, and by this present deed or instrument in writing, by them sealed and delivered in the presence of two credible persons, whose names are or are intended to be hereupon indorsed as witnesses attesting the same, DO, (and each of them so far as he can or may) DOTH absolutely revoke, determine, and make void, all and every the uses, trusts, estates, powers, declarations and limitations, (*pursue the words of the power of revocation*) in or by the hereinbefore in part recited indenture of release, declared, or expressed, of or concerning the messuages, lands, and hereditaments, hereinafter particularly de-

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(1) Care must be taken that the assent of the celles que trusts, if necessary, be testified in the manner required by the power of sale. *Assent of celles que trusts.*

(2) As a subsequent appointment of uses under a power, will be an effectual revocation of former uses, an express revocation of them is not absolutely necessary, nor is there perhaps any real use in it, unless where the former uses are intended to be only partially revoked, in which case an express revocation of the particular uses intended to be altered will be more pointed and explicit, and the deed of appointment less liable to misinterpretation. *Revocation of former uses.*

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scribed, and intended to be by these presents limited and appointed, and granted, released, or otherwise assured, or of or concerning any of them, save only and except the power or authority to limit and appoint the same to the uses hereafter contained. AND THIS INDENTURE ALSO WITNESSETH, (1) that in further pursuance of the power and authority given to or vested in them the said (*trustees*) by the said hereinbefore in part recited indenture of release, [and of all and every other powers and authorities for this purpose in them vested, or in any wise enabling them hereunto,] and in execution of the same, and in consideration of the sum of £ of good, lawful, and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to them in hand well and truly paid (2) by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt whereof in full for the absolute purchase of the fee simple and inheritance in possession of the lands and hereditaments hereinafter described, the said (*trustees*) do hereby respectively acknowledge, and of and from the same and every part thereof do, and each of them doth acquit,

FURTHER WITNESS.

The trustees in consideration of the purchase money.

Copyholds. (1) If the premises are copyhold, see Vol. I. No. XVIII. If part copyhold, see ib. No. XX. XXI.

Outstanding term. If there be an outstanding term to be surrendered, see *ante*, No. XXXI. p. 6. n. (1).

Consideration. (2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6), *et seq.*

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release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said lands and hereditaments, by these presents, they the said (*trustees*) by and with the consent, approbation, and direction of the said (*celles que trusts*) respectively testified as hereinbefore is mentioned, HAVE (and each of them so far as he lawfully can or may), HATH limited, declared, directed and appointed, and by this present deed or instrument in writing by them sealed, delivered, and attested in the manner hereinbefore mentioned, Do and each of them DOTH limit, direct, declare, and appoint(1), that ALL and singular the messuages, lands, and hereditaments hereinafter particularly described, and mentioned or intended to be by these presents granted and released or otherwise assured, [and of or concerning which the uses, estates, trusts, powers, declarations and limitations contained or expressed in the hereinbefore in part recited indenture of release, have been so revoked, determined, and made void as aforesaid, or are intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, appendants and appurtenances, shall from henceforth be, remain, and continue, and the said in part recited indenture of release, and all other conveyances and assurances of the same messuages, lands, and hereditaments, or of any part thereof, shall be and

Appoint to the use of the purchaser.

(1) Pursue the words of the power of limitation. "Limit," &c.

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enure unto " and to and for the only proper use and behoof of the said *(purchaser)*, his heirs and assigns for ever (1)," freed, exonerated, and absolutely discharged of and from all and every the uses, estates, trusts, powers, provisoes, and limitations, in or by the said in part recited indenture of release, declared or expressed of or concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for further assurance of the said messuages, lands, hereditaments, and premises, unto the said *(purchaser)* and his heirs, [and for the considerations aforesaid, and also for and in consideration of the sum of ten shillings, of such lawful and current money as aforesaid, in hand well and truly paid by the said *(purchaser)* to the said *(trustees)* and *(celles que trusts)* respectively, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged]. They the said *(trustees)* at the like request, and with and by the like consent, approbation, and direction of the said *(celles que trusts)* testified as hereinbefore is mentioned, HAVE, and each of them HATH granted, bargained, sold, aliened, and released, and by these presents Do, and each of them DOTH, (by way of conveyance only, and not in or for any warranty of title),

FURTHER WITNESS. The celles que trusts and trustees release and confirm to the purchaser.

Dower.

(1) If the conveyance be made to uses to bar dower, omit the words within inverted commas, and say,

" To the uses, and for the ends and purposes hereinafter declared or expressed concerning the same."

grant, bargain, sell, alien, and release. AND they the said (*celles que trusts*) [according to their respective estates and interests under or by virtue of the said in part recited indenture of release (1),] HAVE, and each of them HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DO, and each of them DOTH, grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL (2), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, described or distinguished; and also all other messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year hereinafter referred to; being the several (*or* part and parcel of the several, *as the case may be*) messuages, lands, tenements, and hereditaments, conveyed and assured, or intended so to be, unto the said (*trustees*) in and by the said hereinbefore in part recited indentures of lease and release as here-

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Parcels.

(1) The words within brackets are improper where the *celles que trusts* are absolute owners of the fee, subject only to the power of sale; but this is seldom the case of estates under settlements, and never where the sale is under a power contained in a will.

(2) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. 13; No. XVI. p. 172; and No. XXVII. p. 485, n. (2). and *ante*, No. XXXI. p. 6, n. (2).; also 4 Elem. Conv. 2d edit. p. 104. Parcels.

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General appurtenances.

inbefore is mentioned; TOGETHER with all [houses (1), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, appendants, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (2). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in, the said (*purchaser*) by virtue of a bargain and sale (3) to him thereof made by the said (*trustees*) and *(celles que trusts)* for five shillings consideration, by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, com-

Reference to the bargain and sale for a year.

General words. (1) See general words applicable to different kinds of real property, and INDEX *voc.* GENERAL WORDS.

Exception. (2) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Bargain and sale. (3) See the form of this bargain and sale, Vol. I. No. XIII. p. 110. and No. XIV. p. 117.

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mencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and all and every the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of them the said (*trustees*) and (*celles que trusts*) and of each and every or any of them, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, writings, and evidences of title whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of them the said (*trustees*) and (*celles que trusts*) or of any or either of them, their, or his heirs or assigns, or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity; and true and attested copies, duly stamped, when and as the said (*purchaser*) his heirs and assigns shall require the same, of all other deeds, muniments, writings, and evidences, (not being of record), so in their, or any or either of their custody or power as afore-

Grant of title deeds.

And copies.

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said, in anywise relating to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value (1); such copies, when first required, to be made and delivered at the expense of the said *(trustees)* and *(cestuis que trusts)* or some or one of them, their, or his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the said *(purchaser)*, his heirs or assigns]. To HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale described, and hereinbefore limited and appointed, and granted, and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, unto (3) " and to and for the use and behoof of him the said *(purchaser)* his heirs

To HOLD to the purchaser in fee-simple.

Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

" And whether mentioned in the schedule here underwritten or hereunto annexed or not."

Habendum.

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Uses to bar dower.

(3) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

" Unto the said *(purchaser)* and his heirs, to and for the uses, ends, and purposes, hereinbefore expressed, concerning the same, that is to say,"

And add the limitation referred, *ante*, No. XXXI. p. 10. n. (3).

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and assigns, for ever," freed, exonerated, and absolutely discharged of and from all and every the uses, trusts, estates, provisoes, declarations, and agreements, in or by the said hereinbefore in part recited indenture of release, contained, declared, or expressed of or concerning the same or any part thereof (1). AND the said (*trustees*) (2) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and not the one for the other of them, or the heirs, executors, or administrators, or the acts, deeds, or defaults of the other of them, but each for himself only, and his own heirs, executors, and administrators, and acts, deeds, and defaults respectively, do and each of them doth hereby covenant, declare, and agree, with and to the said (*purchaser*), his heirs and assigns, that they the said (*trustees*) have not, nor hath either of them, (each covenanting separately as aforesaid) at any time heretofore, either together or separately, made,

Covenant by the trustees that they have not incumbered.

(1) If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here. See the form of such covenant, Vol. I. No. XX. p. 266.

Copyhold.

In some of the printed precedents will be found a release of the power to appoint, but this is not necessary; because, if the appointment under the power be well made, the power will of course be extinguished; and should it be otherwise, and the appointment be defective, yet would the release be ineffectual, for such release is not, it is submitted, confined within the limits of the authority delegated to the appointors; and in some cases, as where a *part* only of the settled estates are sold, a release of this nature would, unless very cautiously worded, be destructive of future appointments of other parts of the estate.

Release of power.

(2) See this covenant by trustees made more pointedly several, *ante*, p. 216, n. (1).

Several covenants.

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done, executed, or knowingly suffered, omitted, or occasioned, [nor caused or procured to be made, done, committed, executed, or omitted, nor been parties or privies, or party or privy to] any act, deed, matter, or thing whatsoever, whereby or by means whereof the power or authority of or for sale or appointment so given to them in or by the said in part recited indenture, now is or can or may be annulled, defeated, or in any wise void or voidable, or whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore limited and appointed, and granted and released, or otherwise assured or intended so to be, or any part thereof, or any of the appurtenances thereto, or the use, estate, or interest mentioned and intended to be by these presents limited and appointed, and granted and released, or otherwise assured therein, are, or is, or can or may be impeached, charged, incumbered, or prejudicially affected, in any manner howsoever.

Covenant by the celles que trusts for the title.

AND (1) the said (*celles que trusts*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and not jointly, nor the one for the other of them, or for the acts, deeds, or defaults, or the heirs, executors, or administrators, of the other or others of them, DO, and each of them DOTH (2),

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Covenants.

(1) Of the covenants for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

(2) Or as *ante*, p. 216. n. (1).

If the *celles que trusts* are husband and wife, tenants for

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hereby covenant, declare, and agree with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter, or thing, whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted, by them the said (*celles que trusts*) or any or either of them, or the said (*settler*) (1), (each covenanting separately as aforesaid) to the contrary, they the said (*trustees*) or some or one of them at the time of the sealing and delivery of these presents, have, or hath in themselves or himself, full power, and lawful and absolute right and title to limit, direct, and appoint, and that they the said (*trustees*) and (*celles que trusts*), or some or one of them, have or hath like power and authority to grant, bargain, sell, release, and confirm, all and singular the messuages, lands, tenements, hereditaments and premises, hereinbefore limited, appointed, released, and confirmed, or intended so to be, and the possession, reversion,

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life, &c. under the settlement, which is frequently the case in conveyances of this kind, say,

"And the said (*husband*), for himself, his heirs, executors, and administrators, &c."

and make the husband covenant for himself throughout, as in No. XXXI.

If a part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of Vol. I. No. XX. p. 269.

Copyhold.

(1) Or if the sale is under a will, add,

"Or the said (*devisor*) deceased."

Vendor entitled by devise.

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and inheritance thereof, "unto and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these presents.

That the purchaser shall quietly enjoy.

AND further, that (1) "he the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times hereafter, enter into and upon, and hold, possess, and enjoy, all and singular the said hereditaments and premises, with their and every of their respective rights, privileges, appendances, and appurtenances; and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit," without any manner of hindrance, interruption, disturbance, claim, or demand whatso-

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Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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ever, by or from the said (*trustees*) or (*celles que trusts*), or any or either of them, or any person or persons now or hereafter rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, or concerning the same or any part thereof, from, through, under, or in trust for them, or any or either of them, or the said (*settler, devisor,* or *last purchaser for a valuable consideration*). And that free and clear, and clearly and absolutely discharged and exonerated, or by and at the expense of the said (*celles que trusts*), or some or one of them, their, his, or her heirs, executors, or administrators, effectually defended, protected, and indemnified, from and against all [former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or suffered by the said (*trus-*

Free from incumbrances.

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tees) and (*celles que trusts*) or any or either of them, or the said (*settler, devisor,* or *other last purchaser*), or any other person or persons, now or hereafter rightfully claiming, or possessing any estate, right, title, or interest, either at law or in equity, from, through, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity, except, &c. (1). AND moreover, that they the said (*celles que trusts*), and all and every person or persons, now or at any time hereafter rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises, hereby granted, released, and confirmed, or mentioned or intended so to be, or any part thereof, from, through, under, or in trust for them, or any or either of them, or the said (*settler, devisor,* or *last purchaser*) shall and will, &c. [*Add covenant for further assurance* (2)]. IN WITNESS, &c. (3).

Covenant for further assurance.

Except, &c. (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Leases. If the premises be on lease, see *ante,* No. XXXI. p. 22, n. (2).

(2) As *ante,* No. XXXVII. p. 164.

Outstanding term. (3) If there be an outstanding term which is to be assigned, or surrendered, see *ante,* No. XXXI. p. 6. n. (1).

Rent charge. If the premises are subject to a rent-charge or the like, see Vol. I. p. 212. 427.

Production of deeds. If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise, as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

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Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

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Trustees for Sale and Mortgagee.

No. XLII.

Conveyance by Trustees *for Sale, under Deed or Will,* Mortgagee in Fee, [*and Owner of the Inheritance* (1)] *to a Purchaser* (2).

Variations *where the Mortgage was for a* Term.
Also where the Purchaser takes the Conveyance to a Trustee to bar Dower, *&c. &c. as in margin below.*

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the mortgagee*) of, &c. (a mortgagee of the hereditaments hereinafter described) of the first part (3), (*the trustees for sale*) of, &c.

Parties.

Owner party. (1) The owner of the inheritance in the case of a conveyance, or the heir at law in the case of a devise, to trustees for sale, is not an essential, but may be a desirable party, see *ante,* No. XL. p. 204, n. (1).

Representatives. If the conveyance be from representatives of a deceased mortgagee, see variations to No. XXXVI. p. 123, *et seq.*; and if the mortgagee be an infant, see *ib.* 126, n. (2).

Reversion, &c. (2) If the vendor be entitled in *remainder* or *reversion,* see *ib.* No. XXIV.

Equity of redemption. If the conveyance be of an *equity of redemption* only, see *ib.* No. XXV.

Moiety, &c. If a *moiety* or other *undivided part,* see *ib.* No. XXVI.

Wife of vendor. (3) If the vendor be married, and his wife entitled to dower, make her a party with her husband, as *ante,* No. XXXI. p. 1. and see *ante,* p. 124, n. (1), and 147, notes.

PURCHASES.

Trustees for Sale and Mortgagee.

(trustees for sale of the said hereditaments as hereinafter recited) of the second part, (*the owner of the inheritance, or his heir at law*), of, &c. (the owner of the inheritance) [*or* other *cestui que* trust] of the same hereditaments) of the third part, and (*the purchaser*) of, &c. (who hath purchased the said premises) of the fourth part (1). WHEREAS, &c. (*recite the conveyance to the mortgagee*) (2). AND WHEREAS, &c. (*recite the conveyance or devise to the trustees for sale, and subsequent appointment of new trustees, if any*) (3). AND whereas the said (*trustees*) in pursuance of the trusts and directions contained in the said hereinbefore last in part recited indenture of release [*or* will] in that behalf, and with the privity and approbation of the said (*owner*) [*or* heir at law] and (*mortgagee*) respectively, caused the several messuages, lands and hereditaments, therein comprised, to be put up to sale by public auction (4) on the day of last past, when the said (*purchaser*) became and was declared to be the highest bidder for the same, and the purchaser thereof, at the sum of £ ,

Recital of the mortgage.

Sale by trustees.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

" Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2, n. (1).

(2) See *ante*, No. XXXVI. p. 124. If the mortgage was for a term of years, see No. XXXVII. p. 145.

Term.

(3) See *ante*, p. 207.

(4) If the premises were sold by private contract, see *ante*, p. 127.

PURCHASES. *Trustees for Sale and Mortgagee.*

and thereupon paid into the hands of the auctioneer the sum of £ by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. AND WHEREAS the said (*purchaser*) hath requested that the said premises may be conveyed to him in the manner hereinafter expressed (1). AND WHEREAS the said (*mortgagee*) has agreed to accept the said sum of £ in satisfaction of his said mortgage, and to execute such release and assurance thereof as hereinafter is contained; [and for the greater satisfaction of the said (*purchaser*) the said (*owner*) (*or heir*) has also agreed to join in the conveyance of the same. NOW THIS INDENTURE WITNESSETH (2) that for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*mortgagee*) in hand well and truly paid (3) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is in full payment and satisfaction of all principal, interest, and other monies due upon or in respect of the said in part recited mortgage,

WITNESS. *In consideration of sum due on mortgage.*

Order of court. (1) If the sale was by order of court, see Vol. I. No. XVI. p. 163. n. (4).

WITNESS. (2) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 3 Elem. Conv. 2d edit. p. 98. *et seq.*

Consideration. (3) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165. n. (6). *et seq.*

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the said (*mortgagee*) doth hereby acknowledge, [and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge, the said (*purchaser*) and (*owner*) and each of them, and their respective heirs, executors, administrators, and assigns, and also the said mortgaged premises by these presents,] HE the said (*mortgagee*) at the request, and by the direction and appointment of the said (*owner*) and also of the said (*trustees*) testified by their respectively sealing and delivering these presents, HATH bargained, sold, released, and quitted claim, and by these presents DOTH bargain, sell, release, and quit claim. AND for the considerations aforesaid, and for and in consideration of the sum of £ of like lawful and current money aforesaid, to the said (*trustees*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivering of these presents, the receipt whereof, and that the same, together with the aforesaid sums of £ and £ making in the whole the sum of £ is in full for the absolute purchase of the fee-simple and inheritance in possession of and in the lands and hereditaments hereinafter described, free from incumbrances, except as hereinafter is recited, the said (*trustees*) do hereby respectively acknowledge, [and of and from the same and every part thereof do, and each of them doth acquit, release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, administrators, and assigns, and also

The mortgagee bargains, sells, &c.

And the trustees, in consideration of the residue of the purchase money,

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Trustees for Sale and Mortgagee.

bargain, sell, &c.

the said hereditaments, by these presents], they the said *(trustees)* pursuant to and in execution of the trusts imposed on them in and by the said hereinbefore last in part recited indenture of release, [*or* will] [and of all and every or any other powers or power, authorities or authority in any wise enabling them in this behalf], and with and by the privity, full approbation, and direction of the said *(owner)* and *(mortgagee)* respectively, testified as aforesaid, HAVE and each of them HATH bargained, sold, aliened, and released, and by these presents Do, and each of them DOTH bargain, sell, alien, and release, and by way of conveyance only, and not for or by way of warranty of title, Do, and each of them DOTH grant and confirm. AND for the considerations aforesaid, [and in consideration of the sum of *5s.* of like lawful and current money, to the said *(owner)* at the same time in hand paid by the said *(purchaser)* the receipt whereof is hereby also acknowledged], HE the said *(owner)* HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said *(purchaser)* and his heirs, ALL (1), &c. or howsoever otherwise (2) the said messuages, lands, tenements, and here-

And the owner grants and confirms.

Parcels.

(1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

General words.

(2) For general words applicable in different species of property, see INDEX, *voc.* GENERAL WORDS.

Trustees for Sale and Mortgagee.

ditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to, being the several [*or* part and parcel of the several *as the case may be*] messuages, lands, and hereditaments, so conveyed [or devised] to the said (*trustees*) in and by the said hereinbefore in part recited indenture [*or* will], in trust to be sold as aforesaid; TOGETHER with all [houses, outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of other rights, privileges, easements, advantages, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed], except (1), &c. (ALL which said messuages,

General appurtenances.

Reference to bargain and sale for a year.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Exceptions.

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lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said *(purchaser)* by virtue of bargain and sale to him thereof made by the said (*mortgagee*) (*trustees*) and (*owner*) (for five shillings consideration), by indenture bearing date on the day next before the day of the date of these presents, for the term of one year commencing from the day next preceding the day of the date of the same indenture (1), and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them; and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of them the said (*mortgagee, trustees and owner*), and of every of them respectively, in, to, out of, or respecting the said hereditaments and premises, or any part thereof.

Grant of title deeds.

[TOGETHER with the said hereinbefore in part recited indenture of mortgage, and the counterpart thereof, and all other deeds, muniments, writings, and evidences of title whatsoever, which in anywise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in

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Bargain and sale.

(1) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

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the possession or lawful power of them the said *(mortgagee, trustees, and owner)*, or of any or either of them, or their or any or either of their heirs or assigns, or of any person or persons from whom they, or any or either of them, can or may procure the same, without action or suit at law or in equity; and true and attested copies, duly stampt, when and as the said *(purchaser)* his heirs or assigns, shall require the same; of all other deeds, muniments, writings, and evidences, (not being of record) now or hereafter being in their or any or either of their custody or power as aforesaid, in anywise relating to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value (1), such copies, when first required, to be made and delivered at the expense of the said (*trustees and owner*) or some or one of them, their or his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same]. To HAVE AND TO HOLD (2) the messuages, lands, tenements, hereditaments, and premises, hereinbefore, and in the said indenture of bargain and sale described, and hereby

And copies.

To HOLD to the purchaser in fee-simple.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

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granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendances, and appurtenances; unto the said (*purchaser*) and his heirs, "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (1)," freed and absolutely discharged and exonerated of and from the said hereinbefore in part recited indenture of mortgage, and all claims and demands whatsoever for or in respect thereof. AND the said (*mortgagee*) for himself, &c. (*add a covenant by mortgagee that he has not incumbered*) (2). And, &c. (*add covenant by the trustees that they have not incumbered*) (3). AND the said (*owner of inheritance*) for himself, his heirs, executors, and administrators, doth hereby covenant (4) and declare, to and with the said (*purchaser*) his heirs and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, or know-

Covenant by the owner, &c. of seisin.

Uses to bar dower.

(1) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinafter expressed concerning the same, that is to say."

And add the limitation referred to, *ante*, No. XXXI. p. 10, n. (3).

(2) See *ante*, p. 134.

(3) See *ante*, p. 216.

Covenants.

(4) Of the covenants for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

ingly suffered, or omitted by him the said *(owner)* (1) to the contrary, they the said (*mortgagee, trustees, and owner*) or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully, rightly, and absolutely seised of, or well entitled to, all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, without there being any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, except, &c. (2)]. AND ALSO, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid), they the said (*mortgagee, trustees,*

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And that he and the trustees have right to convey.

(1) If the owner became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

Vendor entitled by devise, &c.

"Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

If by descent, add,

or by descent.

"Or any of his ancestors," and see Vol. I. No. XV. p. 141, n. 39; and No. XVI. p. 178, *et seq.* in notes.

(2) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Except, &c.

If the premises be on lease, see *ante*, No. XXXI. p. 23, notes.

Leases.

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and owner), or some or one of them, now have or hath in themselves, or himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto "(1) and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these presents. AND further, that "he the said (*purchaser*) his heirs and assigns, shall or lawfully may immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, [with their and every of their respective rights, members, appendances, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for

That the purchaser shall quietly enjoy.

Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

his and their own use and benefit,"] without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from them the said (*mortgagee, trustees, and owner*), or any or either of them, or their or any or either of their heirs, or any person or persons now or hereafter having, or rightfully claiming any estate, right, title, charge, or interest at law or in equity in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them) (1). AND that free and clear, and freely, clearly, and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*owner*) and (*trustees*) or some or one of them, their, or his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all [former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title to dower, remainders, and reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and in-

PURCHASES.

Trustees for Sale and Mortgagee.

Free from incumbrances.

(1) See *ante*, p. 258, n. (1.)

PURCHASES.

Trustees for Sale and Mortgagee.

cumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, or knowingly occasioned, or suffered by the said (*mortgagee, trustees, and owner*), or any or either of them (1), or any other person or persons now or hereafter rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or through their, or any or either of their acts, defaults, means, consent, or privity (2). AND moreover, &c. (*add a covenant by the owner of the inheritance for further assurance* (3). IN WITNESS, &c. (4).

Covenant for further assurance.

Vendor entitled by devise, &c. (1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 257, n. (1).

Lease. (2) If the premises be on lease, see *ante*, p. 25.

(3) See *ante*, p. 165.

Outstanding term. (4) If there be an outstanding term, which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 34.

Rent charge. If the premises are subject to a rent-charge or the like, see Vol. I. p. 212, 427.

Production of deeds. If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp. *** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c. As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

Trustees for Sale and Annuitant.

No. XLIII.

Conveyance by Trustees *for Sale* under a Deed or Will [with Owner of Inheritance] (1) *and an* Annuitant *to a Purchaser.*

Variations *where the Conveyance to the Purchaser is* to uses to bar Dower, &c. &c. *as below in margin.*

THIS INDENTURE of parts, made the day of , in the year, &c. and in the year of our Lord . BETWEEN (*the trustees*) of, &c. (trustees for sale of the hereditaments hereinafter described under the indenture *or* will hereinafter recited) of the first part, (*the annuitant*) of, &c. (who hath an annuity issuing out of the said premises) of the second part, (*the annuitant's trustee*) a trustee for the said (*annuitant*), of the third part, (*the owner of the inheritance*), (being the beneficial owner of the inheritance of the said hereditaments), of the fourth part, and (*the purchaser*), (to whom the said hereditaments are intended to be conveyed as the purchaser thereof), of the fifth part (2). WHERE-

(1) Owner of the inheritance not in general a necessary party, *ante*, p. 204, n. (1).

(2) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

" Being a trustee named and appointed by and on behalf

PURCHASES.

Trustees for Sale and Annuitant.

AS, &c. [*Recite here the grant of the annuity* (1), *and the conveyance to the trustees for sale* (2).] AND WHEREAS the said *(purchaser)* has contracted (3) with the said (*trustees*) for the sale of the said lands and hereditaments, (*or* of the lands and hereditaments hereinafter described, being part or parcel of the lands and hereditaments comprised in the said in part recited indenture *or* will of the day of) at the price or sum of £ free from incumbrances, (except as hereinafter mentioned). AND whereas it has been agreed by and between the several parties hereto, that the said annuity or yearly rent-charge of £ charged upon the said hereditaments by the said hereinbefore in part recited indenture of the day of shall be re-purchased in pursuance of the proviso in the said indenture contained on that behalf, and the said (*annuitant*) and (*trustee*) at the request of the said (*purchaser*) have respectively agreed to execute such release and assurance of their respective estates and in-

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of the said (*purchaser*) for the purposes hereinafter mentioned, of the part."

Outstanding term. If there be an outstanding term, see Vol. I. No. XXVII. p. 401. 430.

Recitals. (1) See *ante*, p. 170.

(2) See *ante*, p. 205.

Auction. (3) If the premises were sold by *public auction*, see *ante*, No. XXXI. p. 4, n. (1).

Order of court. If by order of court, see Vol. I. No. XVI. p. 163, n. (4).

PURCHASES.

Trustees for Sale and Annuitant.

WITNESS, in consideration, &c.

terests therein as hereinafter is expressed. Now THIS INDENTURE WITNESSETH (1), that in pursuance of the said agreement, and for and in consideration of the sum of of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*trustees*) in hand well and truly paid (2) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same, with the sum of £ paid to the said (*annuitant*) as hereinafter is mentioned, and making together the sum of £ is in full for the absolute purchase of the fee-simple and inheritance of the lands and hereditaments hereinafter described, the said (*trustees*) do hereby acknowledge, and of and from the same do fully and absolutely acquit, release, discharge, and exonerate the said (*purchaser*) his heirs, executors, administrators, and assigns, and the said messuages, lands, tenements, and hereditaments, by these presents, they the said (*trustees*) with and by the privity, consent, and approbation of the said (*annuitant*) testified by his sealing and delivery of these presents, HAVE and each of them HATH bargained, sold, aliened, and released, and by these presents DO and each of

The trustees bargain, sell, &c.

(1) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123, *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.* Witness.

(2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6), *et seq.* Consideration.

PURCHASES.

Trustees for Sale and Annuitant.

And owner grants and confirms.

them DOTH bargain, sell, alien, and release, and so far and in such manner as they lawfully can, and safely may, both by the rules of law and equity, DO and each of them DOTH grant and confirm; and for the considerations aforesaid, [and in consideration of the sum of five shillings of like lawful money to the said *(owner)* at the same time paid by the said *(purchaser)*], the receipt whereof is also hereby acknowledged, HE the said *(owner)* HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said *(purchaser)* and his heirs, ALL, &c. (1), or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are comprised or described in a certain indenture of bargain and sale for a year, hereinafter referred to, TOGETHER with all houses (2), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, ways,

Parcels.

General appurtenances.

Parcels. (1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2); and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

General words. (2) See general words applicable to different kinds of real property, INDEX *voc.* GENERAL WORDS.

land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all and all manner of [other] rights, privileges, easements, advantages, conveniences, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (1) (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said *(purchaser)* by virtue of a bargain and sale, (2) to him thereof made by the said *(mortgagee)*, *(trustees)*, and *(owner)*, for five shillings consideration, by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture; and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand what-

PURCHASES.

Trustees for Sale and Annuitant.

Reference to the bargain and sale for a year.

(1) See *ante*, p. 25.

(2) See the form of the bargain and sale for a year, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

Lease for year.

PURCHASES. soever, both at law and in equity, of them the said (*trustees*) and (*owner*) and of every of them, in, to, out of, upon or respecting the said hereditaments and premises, or any part thereof.

Trustees for Sale and Annuitant.

Grant of title deeds. [AND also all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*trustees*) and (*owner*) or any or either of them, or any or either of their heirs, executors, or administrators, or of any person or persons from whom they, or any or either of them, can or may procure the same without

And copies. action or suit at law or in equity, and true and attested copies (duly stamped), when and as the said (*purchaser*) his heirs or assigns, shall require the same, of all other deeds, counterparts, muniments, writings, and evidences, (not being of record), which now are or hereafter shall or may be so in their or any or either of their custody or power as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies when first required, to be made and delivered at

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Schedule of deeds. (1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

Trustees for Sale and Annuitant.

the expense of the said (*trustees*) and (*owner*) or some or one of them, their or his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the said (*purchaser*) his heirs or assigns. To HAVE AND TO HOLD (1) the said messuages, lands, tenements, hereditaments, and premises hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendances, and appurtenances unto the said (*purchaser*) and his heirs, "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever" (2), wholly and absolutely freed, exonerated, and discharged of and from the said annuity or yearly rent-charge or sum of £ and all arrears thereof, and all liens, charges, claims, and demands whatsoever for or concerning the same respectively (3). AND, &c. [*Add covenant by the*

To HOLD to the purchaser in fee-simple.

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(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111. Habendum

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say, Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

Add the limitation referred, *ante*, No. XXXI. p. 10. n. (3).

(3) If the premises are copyhold, see Vol. I. No. XVIII. If part copyhold, see *ib.* Nos. XX. XXI. Copyholds.

PURCHASES.

Trustees for Sale and Annuitant.

FURTHER WITNESS, annuitant releases the annuity.

FURTHER WITNESS, assignment of annuitant's term to merge.

Covenant by owner that the mortgagee, &c. are seised.

trustees that they have not incumbered] (1). AND THIS INDENTURE FURTHER WITNESSETH, that in consideration, &c. [*Release by annuitant, and covenant that he hath right, &c.*] (2). AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and &c. [*Assignment by annuitant's trustee of the term* (3). AND, &c. [*Add covenant by trustee that he has not incumbered*] (4). AND the said (*owner*) for himself, his heirs, executors, and administrators, DOTH hereby covenant (5) and declare, to and with the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*owner*) (6), to the contrary, they the said (*owner and trustees*), or some or one of them, at the

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(1) See *ante*, No. XL. p. 215.

(2) See *ante*, No. XXXVII. p. 179, *et seq.*

Term. (3) See *ante*, No. XXXVIII. p. 181. If the term is to be assigned to merge, see *ante*, p. 34.

If to attend, see *ib.* and p. 36, n. (1).

(4) See *ante*, p. 215.

Covenants. (5) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Copyhold. If a part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of Vol. I. Nos. XX. and XXI.

Vendor entitled by devise, &c. (6) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

"Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

time of the sealing and delivery of these presents, are or is lawfully, rightly, and absolutely seised of or well entitled to all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, without there being any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited or set forth, except only, &c. (1). AND also, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid), they the said (*owner, trustees, annuitant, and termor*) respectively, or some or one of them, now have in themselves, or one of them hath in himself full power, and lawful and absolute right

PURCHASES.

Trustees for Sale and Annuitant.

And have right to convey.

If by descent, add, or by descent.

"Or any of his ancestors,"

and see Vol. I. No. XV. p. 141, n. (39); and No. XVI. p. 178, *et seq.* in notes.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

PURCHASES.

Trustees for Sale and Annuitant.

and title to grant, bargain, sell, release, assure, and confirm all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, and term of years therein, unto and to or for the use, behoof, and benefit of the said (*purchaser*) his heirs (1) and assigns in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that "he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendances,

That the purchaser shall quietly enjoy.

Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

PURCHASES.

Trustees for Sale and Annuitant.

and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*owner, trustees, annuitant, and termor*), or any or either of them (1), or any person or persons now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them (2). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*owner*), his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or

Free from incumbrances.

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(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 268, n. (6).

Vendor entitled by devise, &c.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

Leases.

PURCHASES.

Trustees for Sale and Annuitant.

any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, or knowingly occasioned, or suffered by the said (*owner, trustees, annuitant, and termor*), or any or either of them, or any other person or persons now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or with their, or any or either of their means, consent, or privity, except, &c. (1).

Covenant for further assurance.

AND moreover, that he the said (*owner*) and his heirs, and all and every other, &c. [*covenant for further assurance*] (2). IN WITNESS, &c. (3).

Except, &c (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Outstanding term. (2) If there be an outstanding term, which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 34.

Leases. If the premises be on lease, see *ante*, No. XXXI. p. 25. n. (1).

Rent charge. If the premises are subject to a rent-charge or the like, see Vol. I. p. 212. 427.

Production of deeds. (3) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted

when required by particular circumstances attending the title, or by agreement of parties, see variations Vol. I. No. XVI. p. 188, *et seq.* PURCHASES. *Trustees for Sale and Annuitant.*

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.* Execution, &c.

No. XLIV.

Conveyance by Trustees *for Sale by Deed or Will, a* Mortgagee in Fee, [*with* Owner *of the Inheritance*] (1) *and* Annuitant, *to a Purchaser.*

Variations *where the Mortgage was for a* Term (2).
Where the Conveyance is from the Heir or other Representative of a Mortgagee (3).
Where the Conveyance is taken to a Trustee to bar Dower.

THIS INDENTURE of parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN *(the mortgagee)* of, &c. (a mortgagee in fee [*or* for a term], of the hereditaments hereinafter described, of the first part, (*trustees*) of, &c. (trustees for sale of the said hereditaments), of the second part, (*the annuitant*) of, &c. (having an annuity issuing out of the said hereditaments), of the third part, (*annuitant's trustee*) of, &c. (trustee for the said (*annuitant*)), of the fourth part, (*owner of the inheritance*), (the owner of

Parties.

Owner.

(1) The owner of the inheritance not a necessary party; see *ante*, p. 204, n. (1).

(2) See as to these variations, *ante*, No. XXXVII. p. 145, *et seq.*

(3) See *ante*, No. XXXVI. p. 120.—marg. "heir, &c." and if the heir be an infant, see *ib.* marg. "mortgagee infant."

PURCHASES.

Trustees for Sale, Mortgagee, and Annuitant.

the said premises subject as aforesaid), of the fifth part, and (*the purchaser*), (who hath purchased the said premises), of the sixth part (1). WHEREAS, &c. [*Recite the mortgage, &c.*] (2). AND WHEREAS, &c. [*Recite the grant of annuity, &c.*] (3). AND WHEREAS, &c. [*Recite the conveyance or devise to the trustees*], (4). AND WHEREAS the said (*purchaser*) has contracted (5) with the said (*trustees*) for the sale of the said lands and hereditaments, (*or* of the lands and hereditaments hereinafter described, being part or parcel of the lands and hereditaments comprised in the said in part recited indenture of the day of), at the price or sum of £ free from incumbrances (except as hereinafter mentioned). AND whereas it has been agreed by and between the parties hereto, that the said principal sum of £ so secured upon the said hereditaments by the said in part recited indenture

Recitals.

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(1) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part."

(2) If the mortgage be in fee, see *ante*, p. 120.
If for a term, *ante*, p. 145.

(3) See *ante*, p. 170.

(4) See *ante*, p. 207, 229. if it be a deed, and if a devise, *ante*, p. 206. n. (1).

(5) If the premises were sold by *public auction*, see *ante*, No. XXXI. p. 4. n. (1).

Auction.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4).

Order of court.

PURCHASES. *Trustees for Sale, Mortgagee, and Annuitant.*

of the day of shall be paid off out of the said purchase money, and also that the said annuity or yearly rent-charge of £ so charged thereon by the said hereinbefore in part recited indenture of the day of shall be repurchased in pursuance of the proviso in the said indenture contained on that behalf, and the said (*mortgagee*), (*annuitant*), and (*trustee*), at the request of the said (*purchaser*), have respectively agreed to execute such release, conveyance, and assurance of their respective estates and interests in the said hereditaments as hereinafter is expressed. Now THIS INDENTURE WITNESSETH (1), that in pursuance of the said agreement, and for and in consideration of the sum of £ , of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*mortgagee*), in hand well and truly paid (2) by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt of which said sum of £ and that the same is in full payment and satisfaction of all principal, interest, and other monies due upon or in respect of the said hereinbefore in part recited mortgage, the said (*mortgagee*) doth hereby acknowledge,

WITNESS, in consideration of the sum due upon the mortgage.

WITNESS. (1) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123, *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.*

Consideration. (2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6.) *et seq.*

PURCHASES.

Trustees for Sale, Mortgagee, and Annuitant.

[and of and from the same doth fully and absolutely acquit, release, exonerate, and for ever discharge the said (*purchaser*), and also the said (*owner*), and their respective heirs, executors, and administrators, and likewise the said mortgaged premises, by these presents, HE the said (*mortgagee*), at the request, and by the direction and appointment of the said (*owner* and *trustees*), and with the consent of the said (*annuitant*), testified by their severally being parties to and sealing and delivering these presents, HATH bargained, sold, aliened, released, and quitted claim, and by these presents DOTH bargain, sell, alien, release, and quit claim, unto the said *(purchaser)* and his heirs, ALL, &c. (1), and all other the said messuages, lands, and hereditaments, if any, so granted and released, or otherwise conveyed to him the said *(mortgagee)*, by the said firstly hereinbefore in part recited indentures of the and days of . AND all the estate, right, title, and interest whatsoever of him the said (*mortgagee*), under or by virtue of the same in part recited indentures. TOGETHER also with the said indentures, and all and every other the deeds, writings, muniments, and evidences of title whatsoever, which at or after the sealing and delivery thereof were or was delivered unto him the said (*mortgagee*), or which now are in the custody or

The mortgagee grants, bargains, sells, &c.

The mortgaged premises.

(1) It may in some cases be more proper to refer to the parcels here, and describe them in a subsequent part of the deed; see *ante*, No XL.

Parcels.

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power of him the said (*mortgagee*), or which he can obtain without suit or action at law or in equity, in any wise relating to the same hereditaments and premises, or any part thereof. AND THIS INDENTURE FURTHER WITNESSETH, that (1) for the considerations aforesaid, and in consideration of the further sum of £ of like lawful and current money aforesaid, to the said (*trustees*) at the same time well and truly paid by the said (*purchaser*), the receipt whereof, and that the same together with the said sum of £ so paid to the said (*mortgagee*) as aforesaid, and of £ so paid to the said (*annuitant*) as hereinafter is mentioned, making in the whole the sum of £ is in full for the absolute purchase of the fee simple and inheritance of and in the lands and hereditaments hereinafter described or particularly referred to, the said (*trustees*) do hereby acknowledge, and of and from the same do fully and absolutely acquit, release, discharge, and exonerate the said (*purchaser*), his heirs, executors, administrators, and assigns, and also, the said messuages, lands, tenements, and hereditaments, by these presents, they the said (*trustees*), with and by the privity, consent, and approbation of the said (*annuitant*), testified in the manner aforesaid, HAVE and each of them HATH bargained, sold, aliened, and released, and

FURTHER WITNESS, that in consideration of the residue of the purchase money.

The trustees bargain, sell, &c.

Conciseness.

(1) The form may be shortened by the omission of this further witness, as in the preceding precedent, No. XLIII. p. 263.

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by these presents DO and each of them DOTH bargain, sell, alien, and release, and so far and in such manner as they lawfully can, and safely may, both by the rules of law and equity, DO and DOTH grant and confirm; and for the considerations aforesaid, [and in consideration of the sum of five shillings of like lawful money to the said (*owner*) at the same time paid by the said (*purchaser*)], the receipt whereof is also hereby acknowledged, HE the said (*owner*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL, &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, if any, which are comprised or described in a certain indenture of bargain and sale for a year, hereinafter mentioned, TOGETHER with all [houses, outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, ways, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances

And owner grants and confirms.

Parcels.

General appurtenances.

PURCHASES.

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whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (1). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (2) to him thereof, made by the said (*mortgagee*), (*trustees*), and (*owner*), for five shillings consideration, by indenture bearing date on the day next before the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture; and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of them the said (*trustees*) and (*owner*), or of any or either of them, in, to, out of, upon or

Reference to the bargain and sale for a year.

Exceptions.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Bargain and sale.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

respecting the said hereditaments and premises, or any of them. [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*trustees*) and (*owner*), or any or either of them, or any or either of their heirs, executors, or administrators, or of any person or persons from whom they, or any or either of them, can or may procure the same without action or suit at law or in equity, and true and attested copies (duly stamped), when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences (not being of record), which now are or hereafter shall or may be so in their or either of their possession, power or custody as aforesaid, in any wise relating to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value (1), such copies, when first required, to be made and delivered at the expense of the said (*trustees*) and (*owner*) or some or one of them,

Trustees for Sale, Mortgagee, and Annuitant.

Grant of title deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

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their or his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the said (*purchaser*), his heirs or assigns. To HAVE AND TO HOLD (1) the said messuages, lands, tenements, hereditaments, and premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendances, and appurtenances, unto (2) "the said (*purchaser*) and his heirs, to and for the use and behoof of him the said (*purchaser*), his heirs and assigns for ever," wholly and absolutely freed, exonerated, and discharged from the said sum of £ and all interest and other monies now or heretofore due for or in respect thereof, and of and from all other liens, charges, claims, and demands whatsoever, as well legal as equitable, of or committed or occasioned by the said (*mortgagee*), his heirs, executors, administrators, or assigns, upon or concerning the same respectively, or otherwise by reason of the said in part recited

To HOLD to the purchaser in fee-simple.

Habendum.

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Uses to bar dower.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

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mortgage. AND, &c. [*Add covenant by mortgagee that he has not incumbered*] (1). AND, &c. [*Add covenant by the trustees that they have not incumbered*] (2). AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the sum of £ of such lawful and current money as hereinbefore is mentioned, to the said (*annuitant*) in hand well and truly paid by the said (*purchaser*) at or before the sealing and delivery of these presents, [at the request and by the direction of the said (*trustees*) and (*owner*) respectively, testified as aforesaid], as and for the repurchase and extinguishment of the said annuity or yearly rentcharge of £ so granted and secured to the said (*annuitant*) in or by the hereinbefore in part recited indenture of the day of as aforesaid, the receipt whereof, and that the same is in full for such repurchase and extinguishment, the said (*annuitant*) doth hereby acknowledge, [and of and from the same and every part thereof,] doth by these presents acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, and administrators, and also the said (*owner*) and (*trustees*), their heirs, executors, and administrators, and likewise the lands and hereditaments charged

FURTHER WITNESS. Annuitant releases the annuity.

(1) See *ante*, No. XXXVI. p. 134.

If any part of the lands be copyhold, see Vol. I. No. XX. XXI. Copyhold.

(2) See *ante*, p. 215.

PURCHASES. with the payment of the same], HE the said (*annuitant*) HATH, &c. [*Release, &c. by the annuitant*] (1). AND, &c. [*Add covenant by the annuitant that he has a right to release*] (2). AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, [and in consideration of the sum of five shillings of like lawful current money of England to the said (*annuitant's trustee*) in hand paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged], HE the said (*annuitant's trustee*), at the request and by the direction of the said (*annuitant*), and also of the said (*owner*) and (*trustees*), and at the nomination of the said (*purchaser*), testified in such manner as hereinbefore is expressed, HATH, &c. [*Assignment of term by annuitant's trustee*] (3). And, &c. [*Add covenant by annuitant's trustee that he has not incumbered*] (4). AND the said (*owner*), for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, with and to the said (*purchaser*), his heirs and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or

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FURTHER WITNESS, Assignment of annuitant's term to merge.

Covenant by owner, that the mortgagee, &c. are seised.

(1) See *ante*, p. 179.
(2) See *ante*, p. 181.
(3) See *ante*, p. 181.
(4) See *ante*, p. 158.

Copyholds. If a part of the land be copyhold, make such additions to

omitted by him the said (*owner*) (1), to the contrary, they the said (*owner, mortgagee, trustees, annuitant, and termor*), or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully, rightly, and absolutely seised of or otherwise well entitled to all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee simple in possession, without there being any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited or set forth, and

PURCHASES.

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this and the subsequent covenants as will be found in those of Vol. I. No. XXI. (marg. *c, c,* &c.).

(1) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement; add, Vendor entitled by devise, &c.

" Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

If by descent, add, or by descent.

" Or any of his ancestors,"

And see Vol. I. No. XV. p. 141, n. (39.); and No. XVI. p. 178, *et seq.* in notes.

PURCHASES.

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And have right to convey.

except only, &c. (1). AND also, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid), they the said (*owner, trustees, mortgagee, annuitant, and termor*) respectively, or some or one of them, now have in themselves, or one of them hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, assign, and assure all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto (2) "and to and for the use, behoof, and benefit of the said (*purchaser*), his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents." AND fur-

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Except, &c.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Leases.

If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

Uses to bar dower.

(2) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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ther, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendances, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*owner, trustees, mortgagee, annuitant, and termor*), or any or either of them, or their, or any or either of their heirs, or any person or persons now or hereafter lawfully or rightfully claiming or possessing, any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them (1). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of them, or any or either of them, their or his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases,

Trustees for Sale, Mortgagee, and Annuitant.

That the purchaser shall quietly enjoy.

Free from incumbrances.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 285, n. (1).

Owner entitled by devise, &c.

If the premises be on lease, see ante, No. XXXI. p. 25.

Leases.

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settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or knowingly suffered by the said (*owner, trustees, mortgagee, annuitant, and termor*), or any or either of them, or any other person or persons, now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or their or any or either of their means, consent, or privity. AND moreover that he the said (*owner*) and his heirs, and all, &c. [*Add covenant for further assurance*] (1). IN WITNESS (2), &c.

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(1) See *ante*, p. 164.

Rent charge.

(2) If the premises are subject to a rent-charge or the like, see Vol. I. p. 212. 427.

Production of deeds.

If any of the title deeds are retained by the vendor or his pre-

decessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 34, 106, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196. PURCHASES.

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For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* Provisoes, &c.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.*, also 4 Elem. Conv. 2d edit. p. 88, *et seq.* Execution, &c.

PURCHASES.

Assignees of Bankrupt.

No. XLV.

Conveyance by Assignees of a Bankrupt *to a Purchaser* (1).

Variations *where the Bankrupt took the Estate to Uses to bar* Dower.
Where the Wife *of the Bankrupt is entitled to* Dower.
Also *where the Conveyance to the Purchaser is to Uses to bar* Dower, *&c. &c. as in margin below.*

THIS INDENTURE of three parts, made the day of in the year of the reign, &c.

Life.

Reversion, &c.

Equity of redemption.

Moiety, &c.

Solicitor, &c. cannot purchase.

(1) If the bankrupt be tenant for life only, see Vol. I. No. XXIII.

If he be entitled in remainder or reversion, see *ib.* No. XXIV.

If the conveyance be of an equity of redemption only, see *ib.* No. XXV.

If of a moiety or other undivided part, see *ib.* No. XXVI.

It may here be noticed, that the bankrupt's solicitor, or any assignee under the commission, cannot become the purchaser of the bankrupt's estate, either personally or through an agent, see *Ex parte* Bennet, 10 Ves. jun. 381, 396. Randall *v.* Errington, *ib.* 423. and see Sugd. Vend. and Pur. 434. Neither can a commissioner, though he may not have acted, unless with the consent of the creditors at a general meeting. *Ex parte* Harrison, 1 Buck, 17. If, therefore, an assignee be desirous of purchasing, he must first obtain the consent of the creditors, and then petition the Chancellor, and serve the other assignees, and also the bankrupt with the petition. *Ex parte* Bage, 4 Madd. 459.

and in the year of our Lord (*the assignees*) of, &c. assignees of the estate and effects of (*the bankrupt*) of, &c. a bankrupt, of the first part, the said (*bankrupt*) (1)

BETWEEN PURCHASES.

Assignees of Bankrupt.

(1) As the whole of the bankrupt's interest in the estate is vested in the assignees by the statutes of bankrupts, and the bargain and sale from the commissioners, Banfield *v.* Solomon, 9 Ves. 77; and as the court never supersedes a commission where there have been purchasers under it without confirming such purchases, *Ex parte* Edwards, 10 Ves. 104, *Ex parte* Rawson, 18, *ib.* 164.; the bankrupt is not, *prima facie*, a necessary party to the conveyance to the purchaser; but as a precaution against any defect in the prior proceedings, and to facilitate a satisfactory deduction of title on a future sale, and also for releasing his right to the surplus, if any, of the money arising from the sale, he is reasonably required to join in the conveyance, and also to enter into the usual covenants for the title, &c. and vide Sugd. Vend. and Pur. 333.; he is not, however, it is apprehended, compellable to do so, and see Duchess of Rutland *v.* Wakeman, 8 Brow. Par. Ca. 145. 3. Ves. 203, 504. *Ex parte* Crowder, 2 Rose, 327. The better way, however, perhaps is to procure the bankrupt to join in the bargain and sale to the assignees.

Bankrupt not a necessary party.

Although the bankrupt be tenant in tail only of the estate, no recovery will be necessary, as the intail will be barred by the bargain and sale of the commissioners, in like manner as if by a recovery suffered by the bankrupt, see 21 Jac. I. c. 19. s. 12. and see *post*, p. 29.

Bankrupt tenant in tail.

As the assignment by the commissioners of bankrupts to the assignees will not affect the wife's title to dower; Smith *v.* Smith, 5 Ves. jun. 189; Lyster *v.* Lyster, 1 *ib.* 435; Thornton, *v.* Dixon, 3 Brow. 199; it is equally necessary that she should be a party, or join in the conveyance by the assignees, as in other cases, in order to make a clear title to a purchase.

If therefore the bankrupt be married, and his wife entitled to dower, make her a party with her husband, as *ante*, No. XXXI. p. 1.

Wife of bankrupt dowable.

If the bankrupt took the estate with limitations to a trustee to bar dower, make such trustee a party, and see *ante*, No. XXXIV.

Bankrupt's trustee.

PURCHASES.

of the second part, and (*the purchaser*) of, &c.

Assignees of Bankrupt.

(a purchaser of the hereditaments hereinafter described) (1) of the third part. WHEREAS

Recital of commission of bankruptcy, &c.

a commission of bankrupt, under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the day of now last past, [*or* in the year of our Lord] was awarded and issued against the said (*bankrupt*) and he was thereupon duly found and declared a bankrupt; and the said (*assignees*) were on or about the day of named and chosen assignees of his estate and effects. [AND WHEREAS, &c. (2)].

Recital of bargain and sale by commissioners.

AND WHEREAS by an indenture of bargain and sale inrolled in his Majesty's High Court of Chancery, bearing date the day of now last past, the major part of the commissioners in the said commission named, bargained, sold, and conveyed all and singular the

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Wife of purchaser.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as,

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part."

Part, personal, and provisional assignment.

(2) If any part of the premises be of a personal nature (as valuable furniture or machinery adapted to the house or premises) and there was a provisional assignment made by the commissioners, recite it here, which may be as follows:

"AND WHEREAS by an indenture bearing date the day of last past, and made or expressed to be made between the said (*commissioners*) of the one part, and the

real estates of the said bankrupt unto and to the use of the said (*assignees*) and their heirs, IN TRUST for themselves, and such other creditors of the said (*bankrupt*) as should thereafter seek relief under the said commission. AND WHEREAS the said (*assignees*) in pursuance of the powers so vested in them in that behalf, as aforesaid, caused the messuages, lands, and hereditaments, hereinafter described (part of the real estates of the said (*bankrupt*)) to be put up to sale by public auc-

PURCHASES.

Assignees of Bankrupt.

Sale by public auction.

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said (*provisional assignee*) of the other part, the said commissioners bargained, sold, and assigned unto the said (*provisional assignee*) all and singular the several estates and effects of the said (*bankrupt*) for preserving and securing the same for the use and benefit of the creditors of the said (*bankrupt*) who had sought or might thereafter seek relief under the said commission, according to the statutes made in that behalf; AND by an indenture bearing date the day of then next following, the said (*provisional assignee*) in pursuance of a covenant contained in the said lastly recited indenture for that purpose, bargained, sold, assigned, and transferred unto the said (*general assignees*) their executors, administrators, and assigns, ALL and singular the goods, wares, and merchandize, and personal estate and effects whatsoever of the said (*bankrupt*) comprised in the said indenture of the day of . TO HOLD and take the same unto the said (*general assignees*) their executors, administrators, and assigns; UPON TRUST nevertheless to and for the benefit and advantage of all and every the creditors of the said (*bankrupt*) who had sought or might thereafter seek relief under the said commission, according to the conditions and directions of or by the several statutes in that behalf made and provided."

To hold to the general assignees, in trust for creditors.

PURCHASES.

Assignees of Bankrupt.

tion (†), on the day of last past, at which sale the said (*purchaser*) became and was

Sale by order of court.

If the sale was before a master in Chancery, by the direction of that court, recite the order, &c. for such sale.

"AND WHEREAS, by an order of the High Court of Chancery, bearing date the day of , which was in the year of our Lord , made by the Right Honourable the then Lord High Chancellor of Great Britain, in the matter of the said *(bankrupt)* a bankrupt upon a petition of *(creditors)* on the behalf of themselves, and all other the creditors of the said bankrupt, it was (amongst other things) ordered that the several real estates of the said bankrupt should be forthwith sold before Mr. , one of the masters of the said court, either entire or in parcels, to the best purchaser or purchasers, and for the highest price that could be obtained for the same; and that the assignees of the said bankrupt's estate, and all other proper parties, should join in such sale, and in the conveyances and assurances to the purchaser or purchasers thereof, and should produce all deeds, papers, and writings relating to the title to the said estates, as the said master should direct. AND it was thereby further ordered, that the net money arising by such sale should be paid into the hands of the said assignees, subject to the further order of the said court. AND WHEREAS

Master's report, &c.

Sale by auction.

† The estates of bankrupts and those vested in trustees are usually sold by *public* auction, that the fairness of the sale may not afterwards be questioned. But if they were sold by private contract, (which the assignees are authorised to do, *Ex parte* Denman, 2 Rose, 66), after having been first exposed to sale by auction, (which it seems proper that they should be) it would be right to notice that circumstance by a recital, "that the premises have been already exposed to sale by public auction without effect, and the assignees, being desirous of bringing the affairs of the said bankrupt to a conclusion, have contracted with the purchaser for the sale to him of the said premises."

declared to be the highest bidder for the same, and the purchaser thereof, (as being *(if the case was so)* the premises comprised in or distinguished by lot No. , in the printed particulars of sale thereof then and there exhibited), at the sum of £ . And thereupon paid into the hands of the auctioneer at such sale, the sum of £ by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale in the said particulars underwritten. AND WHEREAS the said (*purchaser*) hath requested that the said hereditaments may be conveyed to him in the manner hereinafter expressed; and for the greater satisfaction of the said (*purchaser*) the said (*bankrupt*) has agreed to join in the conveyance to him thereof. NOW THIS INDENTURE WIT-

PURCHASES.

Assignees of Bankrupt.

WITNESS, in consideration of the purchase money paid to the assignees.

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the said master, by his report in writing, bearing date the day of , which was in the year of our Lord , certified that he had caused the real estates of the said bankrupt to be put up to sale before him on the day of then last, in several distinct lots or parcels, and that at such sale the said (*purchaser*) was the highest bidder for the messuages, &c. comprised in lot No. of the said estates, being the messuages, &c. hereinafter particularly described, at the price of £ . AND WHEREAS the said report, by two several further orders of the said court, was and now stands absolutely confirmed, and the said (*purchaser*) is desirous of having the said messuages, &c. conveyed and assured to him in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that pursuant and in obedience to the said in part recited order, and for and in consideration," &c. (*as in the text*).

PURCHASES. NESSETH that for and in consideration of the sum of £ so paid by the said (*purchaser*) to the auctioneer at the time of the said sale, by way of deposit, and in part of the said purchase money as aforesaid, and of the further sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, other part and in full of the said purchase money in hand paid by the said (*purchaser*) to the said (*assignees*) (1) at or immediately before the sealing and delivery of these presents, [with the privity and approbation of the said (*bankrupt*) testified by his being a party to, and sealing and delivering these presents], the payment of which said several sums of £ and £ in the manner aforesaid, making together the sum of £ , upon and for the trusts and purposes in the said in part recited indenture of bargain and sale of the day of mentioned or referred to concerning the same, and that the same is in full for the absolute purchase of the fee simple and inheritance of and in the lands and hereditaments hereinafter described, the said (*assignees*) do hereby acknowledge, [and of and from the same and every part thereof do, and each of them doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said messuages, lands, and

Assignees of Bankrupt.

Order of court. (1) If the sale was by order of court, see Vol. I. p. 188.

hereditaments, by these presents], they the said (*assignees*) [with the privity and by the direction of the said (*bankrupt*) testified as aforesaid], HAVE and each of them HATH bargained, sold, aliened, and released, and by these presents, DO, and each of them DOTH bargain, sell, alien, and release, and so far and in such manner as they respectively lawfully can or ought, both by the rules of law and equity, DO and each of them DOTH grant and confirm. [And for the considerations aforesaid, and for and in consideration of the sum of five shillings, of like lawful and current money to the said (*bankrupt*) at the same time in hand paid by the said (*purchaser*), the receipt whereof is hereby acknowledged, he the said (*bankrupt*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents, DOTH grant, bargain, sell, alien, release, ratify, and confirm (1)], unto the said (*purchaser*) and his heirs. ALL (2), &c. or how-

PURCHASES.

Assignees of Bankrupt.

The assignees bargain, sell, &c.

And the bankrupt grants and confirms.

The parcels.

(1) Although the bankrupt be tenant in tail only of the lands, the conveyance will, by 21 Jac. I. c. 19, be effectual without a common recovery, and vide 2 Elem. Conv. second edition, p. 115: but the estate must be an estate in possession; for if it be in remainder, the bargain and sale of the commissioners will pass a base fee only, which is all the bankrupt himself could in such case part with, without the concurrence of the tenant for life; see *ib.* n. (1).

Estate tail.

(2) If the bankrupt took the estate to uses to bar dower, add,

"AND THIS INDENTURE FURTHER WITNESSETH (‡), that

FURTHER WITNESS.

(‡) This appointment, &c. by the bankrupt, where he took the estate under the usual limitations to bar dower, is, for abund-

Appointment.

PURCHASES. soever otherwise, the said messuages, lands, tene-

Assignees of Bankrupt. ments, and hereditaments, or any part thereof,

Bankrupt (taking to uses to bar dower) limits and appoints.

for the considerations aforesaid, [and in consideration of the sum of five shillings of like lawful and current money aforesaid, to the said (*bankrupt*) at the time aforesaid, paid by the said (*purchaser*), the receipt whereof is hereby acknowledged], and for further and more satisfactorily assuring of the said hereditaments and premises unto the said (*purchaser*) and his heirs, He the said (*bankrupt*) by virtue and in exercise of the power and authority given or reserved to him in or by the said hereinbefore in part recited indenture of release, [and of all other powers and authorities enabling him thereunto], and at the request of the said (*assignees*) testified by their respectively sealing and delivering these presents, HATH directed, limited, and appointed, and by this deed or instrument in writing, by him sealed and delivered in the presence of, and attested by two or more credible persons, (whose names are, or are intended to be hereupon indorsed, as witnesses thereto, DOTH absolutely and irrevocably direct, limit, and appoint, that all and singular the several messuages, lands, tenements, and heredita-

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ance of caution, usually inserted in addition to the conveyance by the assignees; but as the statutes of bankrupts, 13 Eliz. c. 7, and 21 Jac. I. c. 19, authorise the commissioners (and consequently their assignees) to dispose of every kind of estate, right, title, and interest, which the bankrupt might have parted with, and as they cannot do this, by way of appointment under the power vested in the bankrupt, it seems to follow, that a common form of conveyance by them would be effectual; the necessity of such precaution, therefore, seems, at best, to be questionable, and vid. Sugd. on Pow. 154.

A tenant for life, with a general power of appointment, remainder in default of appointment to the heirs of his body, is not compellable to execute the power for the benefit of his creditors. Thorpe v. Goodall, 7 Vesey, 388.

now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses (1), out-houses, buildings, PURCHASES. *Assignees of Bankrupt.*

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ments, hereinbefore bargained, sold, and released, or otherwise assured or intended so to be, and also the said hereinbefore in part recited indentures, as to and in respect of the same messuages, lands, and hereditaments, do and shall from henceforth and at all times hereafter operate, be, and enure to the uses, upon the trusts, and for the ends, intents, and purposes, hereinafter declared or expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, [and for and in consideration of the further sum of ten shillings of like lawful money aforesaid, well and truly paid by the said (*purchaser*) to the said (*bankrupt and his trustee*) respectively], the receipt whereof is hereby acknowledged, He the said (*bankrupt*) at such request, and so testified as aforesaid, [HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents] DOTH grant, bargain, sell, alien, release, ratify, and confirm, and the said (*bankrupt's trustee*), with and by the privity and direction of the said (*bankrupt*), testified by his sealing and delivering these presents, HATH bargained, sold, and released, and by these presents DOTH bargain, sell, and release, and so far and in such manner as he lawfully can and safely may by the rules of law and equity, DOTH grant and confirm unto the said (*purchaser*), and his heirs, ALL, &c. *as above.* FURTHER WITNESS. Bankrupt and trustee grant and release.

And add a covenant by the bankrupt's trustee that he has not incumbered, as *ante*, p. 155.

(1) Adapt the general words to the nature of the property, and see INDEX, *voce* GENERAL WORDS. General words.

PURCHASES.

Assignees of Bankrupt.

General appurtenances.

barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other] rights, privileges, advantages, appendances, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof, belonging, or in any wise appertaining, [or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], except, &c. (1). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of or legally vested in the said (*purchaser*) by virtue of a bargain and sale (2) to him thereof made by the said (*assignees* [*and bankrupt*)] (for five shillings consideration) by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and rever-

Reference to bargain and sale for a year.

Exceptions.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Bargain and sale.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110; and No. XIV. p. 117.

Assignees of Bankrupt.

sions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of them the said *(assignees and bankrupt)* and every of them respectively, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, writings and evidences of title whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of them the said (*assignees and bankrupt*) or any or either of them, their or his heirs or assigns, or of any person or persons from whom they, or any or either of them, can or may procure the same, without action or suit at law or in equity, and true and attested copies(1) duly stamped, when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences, (not being of record) so now, or hereafter being in their, or any or either of their

Grant of title deeds.

And copies.

(1) Where the title deeds cannot be delivered, the assignees must, like other vendors, give attested copies of them at the expense of the estate. *Ex parte* Stewart, 2 Rose, 215.

Title deeds.

PURCHASES.

Assignees of Bankrupt.

custody or power as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies when first required, to be made and delivered by and at the expense of the said (*assignees*), or of the estate and effects of the said (*bankrupt*); but all future copies to be made and taken at the expense of the person or persons requiring the same (2). To HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and other the

To HOLD to the purchaser in fee-simple.

Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

Wife of bankrupt.

(2) If the wife of the bankrupt be a party, add here a covenant by the bankrupt, with the privity and by the direction of the assignees, to levy a fine at the expense of the trust estate; for the form of which see *ante*, No. XXXI. p. 11.

Copyholds.

If any part of the lands be copyhold, and they were included in the bargain and sale to the assignees, a covenant by the assignees to surrender them may be properly introduced here; see the form of such covenant, Vol. I. No. XX. p. 266.

But to avoid the fines payable on the admission of the assignee, Lord Hardwicke recommended them to be omitted out of the bargain and sale, and conveyed immediately by the commissioners to the purchaser: see Drury v. Man, 1 Atk. 96, which will be fully effective, as by the stat. 13 Eliz. c. 7, s. 3, the lord is required, upon payment of the customary fines, to grant the same unto such purchaser by copy of court roll, and to admit them accordingly. When, therefore, they have not been conveyed to the assignees, the commissioners should be parties, and join in a bargain and sale to the purchaser.

PURCHASES.

Assignees of Bankrupt.

premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendances and appurtenances, unto the said (*purchaser*) and his heirs "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (1)." AND the said (*assignees*) for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, [and not the one for the other of them, or the heirs, executors, or administrators, or the acts, deeds, omissions, or defaults, of the other of them, but each for himself only, and his own heirs, executors, and administrators, respectively, and his and their own respective acts, deeds, and defaults (2)], do covenant,

Covenant by the assignees that they have not incumbered.

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(1) If the conveyance is intended to be taken to uses to bar a wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

Unless the bankrupt took to like uses, in which case omit, "unto the said purchaser and his heirs,"

And in either case add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

(2) This covenant may be made more pointedly separate, as follows:

Several covenant by assignees.

"And the said (*one of the assignees*) doth hereby for himself, his heirs, executors, and administrators, covenant and declare, to and with the said (*purchaser*) his heirs and assigns, that he the said (*assignee*) hath not at any time

PURCHASES.

Assignees of Bankrupt.

declare, and agree, with and to the said (*purchaser*) his heirs and assigns, by these presents, that they the said (*assignees*) have not nor hath either of them, (each covenanting separately as aforesaid), at any time heretofore, either together or separately, made, done, executed, or knowingly occasioned, suffered, or omitted, nor caused or procured to be made, done, executed, or knowingly occasioned, suffered, or omitted, nor been parties or privies, or party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, or any part thereof, or any of the appurtenances thereto, [or the estate or interest intended to be by these presents granted and released, or otherwise assured therein], are, or is, or can or may be impeached, charged, incumbered,

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heretofore either alone or together with the said (*other assignee*) made, done, executed, or knowingly occasioned, suffered, or omitted, or been party or privy to, And the said (*latter assignee*) doth hereby for himself, his heirs, executors, and administrators, covenant and declare, to and with the said (*purchaser*) his heirs and assigns, that he the said (*last assignee*) hath not at any time heretofore, either alone or together with the said (*first assignee*) made, done, executed, or knowingly occasioned, suffered or omitted, or been party or privy to, any act, deed, &c." *as above.*

Or,

"And each of them the said (*assignees*) for himself, his heirs, executors, or administrators, doth by these presents, &c." *as above.*

Assignees of Bankrupt.

or prejudicially affected, in any wise howsoever (1). AND the said (*bankrupt*) (2) for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, to and with the said (*purchaser*), his heirs and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*bankrupt*) (3), to the contrary, they the said

Covenant by bankrupt for the title.

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(1) A covenant by the assignees that they have not incumbered, is the only one they are usually required (or can be compelled) to enter into; but as they are commonly the persons who are entitled to the chief, or a very considerable part of the purchase money, it seems reasonable that they should also covenant for the title, particularly where the bankrupt is not a party to the conveyance. And as it has been held that in case of a defect of title, the assignees are compellable to execute further assurance, Taylor v. Wheeler, 2 Vern. 564, and note (1) to p. 566; Pye v. Dauburg, 3 Brow. Ch. Rep. 595, it seems reasonable that they should be made expressly to enter into this covenant.

Assignees not incumbered.

(2) Although a bankrupt is generally made to enter into the usual covenants for the title, quiet enjoyment, and further assurance, and see Sug. Vend. and Pur. 333; yet this cannot be required of him, see *ante*, p. 291, n. (1).

Covenant for title.

Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

Covenants.

(3) If the bankrupt became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

Vendor entitled by devise, &c.

"Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

If by descent, add,

or by descent.

PURCHASES. (*bankrupt and assignees*), or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully, rightly, and absolutely seised in their or his demesne as of fee, of all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, as of or for a good, perfect, clear, and indefeasible estate of inheritance, in fee-simple in possession, without the said premises or estates being subject or liable to any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, save only and except (1). AND also that for and notwithstanding any such act, deed, matter, or thing (as aforesaid) they the said (*assignees*) and (*bankrupt*), or some or one of them, now have or hath in themselves, or himself,

Assignees of Bankrupt.

And that he and the assignees have right to convey.

"Or any of his ancestors,"

and see Vol. I. No. XV. p. 141, n. (39); and No. XVI. p. 178, *et seq.* in notes.

Bankrupt's trustee. If the bankrupt took his conveyance to a trustee to bar dower, add,

"Or by the said *(trustee)*."

In this place, and throughout the covenants after the name of the bankrupt.

Except, &c. (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto " and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents" (1). AND further, that " he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, privileges, members, and appurtenances; and receive and retain the rents, issues, profits,

PURCHASES.

Assignees of Bankrupt.

That the purchaser shall quietly enjoy.

(1) If the conveyance is to be made to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

" Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

" And further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes, hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

PURCHASES. and proceeds thereof, to and for his and their own use and benefit," without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from them the said (*bankrupt*) and (*assignees*) or any or either of them, or their or any or either of their heirs, or any person or persons now or hereafter rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them (1). AND that free and clear, and freely, clearly, and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*bankrupt*) and (*assignees*), or some or one of them, or the estate and effects of the said (*bankrupt*) effectually defended, protected, and indemnified, of, from, and against all [former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of

Assignees of Bankrupt.

Free from incumbrances.

Bankrupt entitled by devise, &c.

(1) If the bankrupt took by devise, voluntary conveyance, or descent, see *ante*, p. 304, n. (4).

Leases.

If the premises are on lease, see *ante*, No. XXXI. p. 25.

PURCHASES.

Assignees of Bankrupt.

record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or knowingly suffered by the said (*bankrupt*) and (*assignees*) or any or either of them (1), or any other person or persons now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any or either of them, or by or through their, or any or either of their acts, defaults, means, consent, or privity, except, &c. (2). AND moreover, [*add covenant by the bankrupt for further assurance*] (3). IN WITNESS (4), &c.

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(1) If the vendor took otherwise than by descent, see *ante*, p. 305, n. (4). Bankrupt not taking by descent.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 27. Leases.

(3) For the form of this covenant, see *ante*, No. XXXVII. p. 164.

(4) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant by the assignees for the production of them, as *ante*, No. XXXI. p. 39. and see Vol. I. No. XVI. p. 183. in notes, and p. 196. confining the period of production to the assignees continuing such. *Ex parte* Stuart, 2 Rose, 215. Production of deeds.

For various covenants, provisoes, clauses, &c. to be inserted Provisoes, &c.

PURCHASES.

Assignees and Annuitant.

Recitals.

part (1). WHEREAS, &c. (2). AND WHEREAS the said lands and hereditaments were put to sale by public auction at on the day of last past, by the said (*assignees*) in pursuance of the trusts of the said in part recited indenture of bargain and sale of the day of when the said (*purchaser*) became and was declared to be the highest bidder and purchaser thereof, at the sum of £ and thereupon paid into the hands of the auctioneer at such sale the sum of £ by way of deposit and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. AND WHEREAS the said (*purchaser*) hath requested that the said hereditaments may be conveyed to him in the manner hereinafter expressed. AND WHEREAS it has been agreed, that the said annuity or yearly rent-charge of £ so chargeable upon the said hereditaments as aforesaid, shall be re-purchased out of the sum of £ and the said (*annuitant*) and (*bankrupt*) have respectively agreed to join in the conveyance and assurance of the said premises to the said (*purchaser*). Now

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Wife of purchaser.

(1) If the purchaser be married, and his wife dowable, make a trustee party, as

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part."

Recitals.

(2) Recite here the grant of annuity, as in No. XXXVII. p. 170. And the bankruptcy and proceedings under the commission, as *ante*, p. 292, and see notes there, *et seq.*

PURCHASES.

Assignees and Annuitant.

WITNESS. In consideration of a further sum.

THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of £ of lawful and current money, of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*assignees*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents in part of the said purchase money or sum of £ the receipt whereof, &c. (1), they the said (*assignees*) [by and with the consent and direction of the said (*bankrupt*), and with the privity and consent of the said (*annuitant*), testified, &c. and according to their respective estates and interests, under or by virtue of the said hereinbefore in part recited indenture of the day of] HAVE and each of them HATH bargained, sold, released, and disposed of, and by these presents Do, and each of them DOTH bargain, sell, release, and dispose of; [and by way of conveyance only, and not by way of warranty, DO and each of them DOTH grant and confirm]; And for the considerations aforesaid, and in consideration of the further sum of £ of like lawful and current money, at the same time, well and truly paid by the said (*purchaser*) to the said (*annuitant*) as hereinafter is mentioned, being, (together with the said sum of £ paid by way of deposit as aforesaid) the residue and in full of the said purchase money, or sum of £ [and

Assignees bargain, sell, &c.

(1) As *ante*, p. 296.

PURCHASES. *Assignees and Annuitant.*

of the sum of five shillings of like lawful and current money at the same time paid by the said (*purchaser*) to the said (*bankrupt*)] the payment of which said several sums at and by such request and direction as aforesaid, and that the same sums, making together the sum of £ are in full for the absolute purchase of the fee-simple and inheritance in possession of the messuages, lands, tenements, and hereditaments, hereinbefore granted and released, or otherwise assured, or intended so to be, wholly discharged of the said annuity or yearly sum of £ and of all claims and demands, for or in respect of the same, the said (*assignees*) and (*bankrupt*) and each of them do and doth hereby acknowledge, [and of and from the same and every part thereof, do and doth release, exonerate, and discharge the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said hereditaments, by these presents and by the receipt or acquittance for the same sums hereupon indorsed], He the said (*bankrupt*) HATH granted, bargained, sold, and released, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL that, &c. (1), or howsoever otherwise, the said mes-

Bankrupt grants and confirms.

Moiety, &c. (1) If the conveyance be of a moiety or other portion only of the estate, see the mode of description, &c. in Vol. I. No. XXVI.

Remainder, &c. And if it be of a remainder or reversion expectant upon the determination of any prior estate, see ib. No. XXIV.

suages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year hereinafter mentioned to bear date the day next before the day of the date hereof; TOGETHER with all [houses (1), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in, the said (*pur-*

General appurtenances.

Reference to bargain and sale for a year.

(1) See general words applicable to different kinds of real property, INDEX, *voc.* GENERAL WORDS.

General words.

PURCHASES.

Assignees and Annuitant.

chaser) by virtue of a bargain and sale (1) to him thereof made by the said (*assignees*), (*annuitant*), and (*bankrupt*) for five shillings consideration, by indenture bearing date on the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and all and singular the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, or any part thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of them the said (*assignees*) and (*bankrupt*) and of each of them respectively, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of the said (*assignees*) and (*bankrupt*) or any or either of them,

Grant of title deeds.

Bargain and sale.

(1) See the form of this bargain and sale, Vol. I. No. XIII. p. 110; and No. XIV. p. 117.

or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity [and true and attested copies, (duly stamped) when and as the said (*purchaser*) his heirs or assigns shall require the same, of all other deeds, muniments, writings, and evidences (not being of record) so in their or any or either of their custody or power as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies, when first required, to be made and delivered at the expense of the said (*assignees*) or the estate of the said (*bankrupt*); but all future copies to be made and taken at the expense of the person or persons requiring the same. To HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, and premises hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their respective rights, members, appendances, and appurtenances, unto "the said (*purchaser*) and his heirs, to the use and behoof of him the said (*purchaser*) his heirs and assigns for

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And copies.

To HOLD to the purchaser in fee.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

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ever," (1), freed and absolutely discharged and exonerated of and from the said annuity or yearly rent-charge of £ and all arrears thereof, and of and from all other charges and incumbrances whatsoever, except as hereinafter is expressed.

FURTHER WITNESS. Annuitant releases the annuity.

AND THIS INDENTURE FURTHER WITNESSETH (2), that in consideration of the sum of £ of such lawful and current money, as hereinbefore is mentioned, in hand well and truly paid by the said *(purchaser)* to the said *(annuitant)* at or immediately before the sealing and delivery of these presents, at the request and by the direction of the said (*assignees*) and (*bankrupt*) respectively, testified as aforesaid, in full for the repurchase and extinguishment of the said annuity or yearly rent-charge of £ so granted or secured to the said *(annuitant)* in and by the said in part recited indenture of the day of as aforesaid, the receipt whereof, and that the same is in full for such repurchase and extinguishment, the said *(annuitant)* doth hereby acknowledge, and of and from the same and every part thereof doth by

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Uses to bar dower.

(1) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

And add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

Annuity to continue.

(2) If the annuity is to be continued, see *ante*, No. XXXVIII. p. 179, n. (1).

these presents acquit, release, exonerate, and for ever discharge the said *(purchaser)* his heirs, executors, and administrators, and also the said *(assignees)* and *(bankrupt)* respectively, and likewise the lands and hereditaments charged with the payment of the same, He the said *(annuitant)* at and by such request and direction and so testified as aforesaid, HATH bargained, sold, assigned, released, and quit-claimed, and by these presents DOTH bargain, sell, assign, release, and quit-claim, unto the said *(purchaser)* and his heirs, all that the said annuity, yearly rent-charge, or annual sum of £ so granted or secured to him the said *(annuitant)* by the said hereinbefore in part recited indenture of the day of , and charged upon or issuable out of the aforesaid hereditaments as hereinbefore is mentioned, and all arrears (if any) thereof, and all powers, authorities, remedies, and means for recovering or enforcing the payment thereof, and also the said in part recited indenture, warrant of attorney, and judgment, and all other deeds, instruments, and writings now subsisting and in force for securing the payment thereof, and all and every power and powers of distress and entry, and other powers and remedies for or in relation thereto, and all the estate, right, title, interest, benefit, claim and demand whatsoever, as well equitable as legal, of him the said *(annuitant)* in, to, or concerning the same, to the end and intent that the said annuity, yearly rent-charge, or annual sum may sink into and be hence-

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forth consolidated with the freehold and inheritance of the messuages, lands, and hereditaments charged with the payment thereof, or otherwise cease and be utterly void and extinguished, and the said messuages, lands, and hereditaments be henceforth and for ever discharged and exonerated from the same and every part thereof (1).

Covenant by annuitant that he has power to release, &c.

AND the said (*annuitant*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*annuitant*) hath not at any time heretofore made, done, committed, or knowingly suffered or omitted, nor caused or procured to be made, done, committed, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof he is, shall, or may be incapable of or prevented from releasing or extinguishing the said annuity or yearly rent-charge of £ or the securities and remedies for the same, in the manner hereinbefore expressed, and according to the true intent and meaning of these presents.

FURTHER WITNESS. Assignment of annuitant's term to merge.

AND THIS INDENTURE FURTHER WITNESSETH, that [for and in consideration of the sum of five shillings to the said (*annuitant's trustee*) in hand paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] he the said (*annuitant's trustee*) at the request and by the

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Vendor's wife.

(1) If the vendor's wife be party, add here a covenant to levy a fine, as *ante*, No. XXXI. p. 11.

Assignees and Annuitant.

direction of the said (*annuitant*) and also of the said (*bankrupt*) testified by their respectively sealing and delivering these presents, HATH assigned, surrendered, and yielded up, and by these presents DOTH assign, surrender, and yield up, and the said (*vendor*) and (*annuitant*) for the considerations hereinbefore expressed, and according to their respective estates and interests have and each of them hath assigned, ratified, and confirmed, and by these presents do and each of them doth assign, ratify, and confirm unto the said (*purchaser*) his heirs and assigns (1), ALL and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, and so demised to him the said (*termor*) in and by the said hereinbefore in part recited indenture of the day of as aforesaid, together with all and singular the rights, members, appendants, and appurtenances, to the same belonging, and all the estate, right, title, and interest whatsoever, of him the said (*annuitant's trustee*) in or to the same hereditaments and premises, or any part thereof, under or by virtue of the same indenture, or otherwise howsoever. [TO HAVE AND TO HOLD the said messuages, lands, hereditaments, estate, interest, and premises hereby assigned, or intended so to be, unto him the said (*purchaser*) and his heirs, for and during all the residue now to come of or in

(1) If the term is to be assigned to attend the inheritance, see variations to No. XXXVII. p. 151, *et seq.*

Term to attend.

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forth consolidated with the freehold and inheritance of the messuages, lands, and hereditaments charged with the payment thereof, or otherwise cease and be utterly void and extinguished, and the said messuages, lands, and hereditaments be henceforth and for ever discharged and exonerated from the same and every part thereof (1).

Covenant by annuitant that he has power to release, &c.

AND the said (*annuitant*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*) his heirs and assigns, that he the said (*annuitant*) hath not at any time heretofore made, done, committed, or knowingly suffered or omitted, nor caused or procured to be made, done, committed, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof he is, shall, or may be incapable of or prevented from releasing or extinguishing the said annuity or yearly rent-charge of £ or the securities and remedies for the same, in the manner hereinbefore expressed, and according to the true intent and meaning of these presents.

FURTHER WITNESS. Assignment of annuitant's term to merge.

AND THIS INDENTURE FURTHER WITNESSETH, that [for and in consideration of the sum of five shillings to the said (*annuitant's trustee*) in hand paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] he the said (*annuitant's trustee*) at the request and by the

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Vendor's wife.

(1) If the vendor's wife be party, add here a covenant to levy a fine, as *ante*, No. XXXI. p. 11.

PURCHASES.

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direction of the said (*annuitant*) and also of the said (*bankrupt*) testified by their respectively sealing and delivering these presents, HATH assigned, surrendered, and yielded up, and by these presents DOTH assign, surrender, and yield up, and the said (*vendor*) and (*annuitant*) for the considerations hereinbefore expressed, and according to their respective estates and interests have and each of them hath assigned, ratified, and confirmed, and by these presents do and each of them doth assign, ratify, and confirm unto the said (*purchaser*) his heirs and assigns (1), ALL and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, and so demised to him the said (*termor*) in and by the said hereinbefore in part recited indenture of the day of as aforesaid, together with all and singular the rights, members, appendants, and appurtenances, to the same belonging, and all the estate, right, title, and interest whatsoever, of him the said (*annuitant's trustee*) in or to the same hereditaments and premises, or any part thereof, under or by virtue of the same indenture, or otherwise howsoever. [TO HAVE AND TO HOLD the said messuages, lands, hereditaments, estate, interest, and premises hereby assigned, or intended so to be, unto him the said (*purchaser*) and his heirs, for and during all the residue now to come of or in

(1) If the term is to be assigned to attend the inheritance, see variations to No. XXXVII. p. 151, *et seq.* Term to attend.

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spectively, or intended so to be, "unto and to the use and behoof of the said (*purchaser*), his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these presents. AND further (1) "that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon and after the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances; and receive and retain the rents, issues, and profits, thereof, to and for his and their own proper use and benefit," without any manner of hindrance, interruption, disturbance, claim, or

That the purchaser shall quietly enjoy.

Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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demand whatsoever, by or from the said (*assignees, bankrupt, annuitant, and trustee*), or any or either of them, or their or any or either of their heirs, or any person or persons now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for them, or any or either of them. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*assignees*) or the estate of the said (*bankrupt*) effectually defended, protected, and indemnified, from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created,

Free from incumbrances.

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executed, committed, occasioned, or knowingly suffered by the said (*assignees, bankrupt, annuitant, and trustee*) or any or either of them, or any other person or persons, now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity (1). AND moreover, that he the said (*bankrupt*) and his heirs, and all and every person or persons, now or at any time hereafter, rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises, hereby granted, released, and assigned, or otherwise assured respectively, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, shall and will, &c. [*proceed with this covenant for further assurance, as in No. XXXVII. p.* 164.] (2). IN WITNESS, &c.

Covenant for further assurance.

Leases. (1) If the premises be on lease, see *ante*, No. XXXI. p. 25, n. (1).

Production of deeds. (2) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39; or otherwise, as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title,

or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* PURCHASES.

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*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86. Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.* Execution, &c.

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executed, committed, occasioned, or knowingly suffered by the said (*assignees, bankrupt, annuitant, and trustee*) or any or either of them, or any other person or persons, now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity (1). AND moreover, that he the said (*bankrupt*) and his heirs, and all and every person or persons, now or at any time hereafter, rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises, hereby granted, released, and assigned, or otherwise assured respectively, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, shall and will, &c. [*proceed with this covenant for further assurance, as in No. XXXVII. p.* 164.] (2). IN WITNESS, &c.

Covenant for further assurance.

Leases. (1) If the premises be on lease, see *ante*, No. XXXI. p. 25, n. (1).

Production of deeds. (2) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39; or otherwise, as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c. For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title,

or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.* PURCHASES.

Assignees and Annuitant.

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Assignees and Mortgagee.

No. XLVII.

Conveyance from the Assignees *of a* Bankrupt, *and a* Mortgagee in Fee (1), *to a Purchaser.*

Variations *where the Mortgage was for a* Term.
Also where the Purchaser takes the Conveyance to Uses to bar Dower.

Parties.

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the mortgagee*) of, &c. (a mortgagee in fee *(or as the case may be)* of the hereditaments hereinafter described) of the first part, (*the assignees*) of, &c. (assignees of the estate and effects of *(the bankrupt)* of, &c. a bank-

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Tail. (1) If the bankrupt be tenant in tail, see *ante*, Vol. I. No. XXII.

Life. If tenant for life, see *ib.* No. XXIII.

Reversion, &c. If he be entitled in remainder or reversion, see *ib.* No. XXIV.

Moiety, &c. If the conveyance be of a moiety or other undivided part, see *ib.* No. XXVI.

Copyholds. If the premises are copyhold, see Vol. I. No. XVIII.
If part copyhold, see *ib.* Nos. XX. XXI.

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rupt) of the second part, the said *(bankrupt)* (1) of the third part, and *(the purchaser)* (2) of, &c. of the fourth part. WHEREAS by indentures of lease and release (3), bearing date respectively on or about the and days of , which was in the year of our Lord , the release being made or expressed to be made between the said *(bankrupt)* of the one part, and the said *(mortgagee)* of the other part, the said *(bankrupt)* in consideration of the sum of £ to him advanced by the said (*mortgagee*) granted, released, and conveyed the several messuages, lands and hereditaments, hereinafter described, unto and to the use of the said (*mortgagee*) his heirs and assigns, SUBJECT nevertheless, to a proviso or agreement therein contained, that if the said *(bankrupt)* his heirs,

Recital of mortgage.

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(1) If the bankrupt be married, and his wife entitled to dower, make her a party with her husband, as *ante*, No. XXXI. p. 1.

Wife of vendor.

As to the bankrupt being party, see *ante*, p. 291, n. (1).

Bankrupt party.

If the vendor took the estate with limitations to a trustee to bar dower, make such trustee a party, as *ante*, No. XXXIV.

Vendor's trustee.

If the conveyance is from representatives of a deceased mortgagee, see No. XXXVI.

(2) If the purchaser be married, and his wife dowable, make a trustee party, as

Wife of purchaser.

" Being a trustee named and appointed by and on behalf of the said *(purchaser)* for the purposes hereinafter mentioned, of the part," as *ante*, No. XXXI. p. 2, n. (1).

If there be an outstanding term, see Vol. I. No. XXVII. p. 401. 430.

Outstanding term.

(3) If the mortgage was for a term of years, recite as *ante*, No. XXXVII. p. 146.

Term.

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Assignees and Mortgagee.

executors, or administrators, or any other person or persons, on his or their behalf, should pay or cause to be paid unto the said (*mortgagee*) his executors, administrators, or assigns, the said sum of £ with interest for the same, after the rate therein mentioned, and upon the day therein appointed for payment thereof, the said (*mortgagee*) his heirs or assigns, should convey the same lands and hereditaments, with their appurtenances, unto and to the use of the said (*bankrupt*) and his heirs, or unto such other person or persons, and in such manner and form, as he or they should direct, freed and absolutely discharged from all demands whatsoever, for or in respect of the said mortgage, and all incumbrances committed or occasioned by him the said (*mortgagee*) his heirs or assigns. AND WHEREAS default was made in payment of the said sum of £ at the time stipulated in the said proviso for payment of the same (1), whereby the estate and interest of the said (*mortgagee*) in the said mortgaged premises, became absolute at law, but the same remained and still continue redeemable in equity, on repayment of the said sum of £ and of all interest due for the same. AND WHEREAS, &c. (2). AND WHEREAS

Contract for purchase.

(1) If this was not so, recite the real fact, and by 21 Ja. 1. c. 1. s. 13. commissioners of bankrupt are authorized to tender mortgage money on the day appointed for payment, in like manner as the mortgagor himself.

(2) Recite the commission of bankruptcy, and the proceedings thereon, &c. as *ante*, p. 292.

PURCHASES.

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direction of the said (*annuitant*) and also of the said (*bankrupt*) testified by their respectively sealing and delivering these presents, HATH assigned, surrendered, and yielded up, and by these presents DOTH assign, surrender, and yield up, and the said (*vendor*) and (*annuitant*) for the considerations hereinbefore expressed, and according to their respective estates and interests have and each of them hath assigned, ratified, and confirmed, and by these presents do and each of them doth assign, ratify, and confirm unto the said (*purchaser*) his heirs and assigns (1), ALL and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be, and so demised to him the said (*termor*) in and by the said hereinbefore in part recited indenture of the day of as aforesaid, together with all and singular the rights, members, appendants, and appurtenances, to the same belonging, and all the estate, right, title, and interest whatsoever, of him the said (*annuitant's trustee*) in or to the same hereditaments and premises, or any part thereof, under or by virtue of the same indenture, or otherwise howsoever. [TO HAVE AND TO HOLD the said messuages, lands, hereditaments, estate, interest, and premises hereby assigned, or intended so to be, unto him the said (*purchaser*) and his heirs, for and during all the residue now to come of or in

(1) If the term is to be assigned to attend the inheritance, see variations to No. XXXVII. p. 151, *et seq.*

Term to attend.

PURCHASES. *Assignees and Mortgagee.*

ditaments may be conveyed to him in the manner hereinafter expressed, and for the greater satisfaction of the said (*purchaser*) the said bankrupt has agreed to join in such conveyance thereof. NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, and for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*mortgagee*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, with and by the privity, consent, and direction of the said (*assignees*) [and (*bankrupt*) respectively], testified by their severally being parties to and sealing and delivering these presents, the receipt of which said sum of £ and that the same is in full payment and satisfaction of all principal, and interest, due upon or in respect of the said hereinbefore in part recited mortgage, the said (*mortgagee*) doth hereby acknowledge, [and of and from the same and every part thereof, doth acquit, release, exonerate, and for ever discharge, the said (*purchaser*) and the said (*assignees*) and (*bankrupt*) and each of them, and their respective heirs, executors, administrators, and assigns, and also the said mortgaged premises by these presents,] HE the said (*mortgagee*) at the request, and by the direction and appointment of the said (*assignees*) and also of the said (*bankrupt*) testified as hereinbefore is mentioned, and by way of conveyance only, and not for warranty

WITNESS, in consideration of the mortgage money.

The mortgagee grants, &c.

of title, HATH granted, bargained, sold, and released, and by these presents DOTH grant, bargain, sell, release, quit claim, and confirm: AND for and in consideration of the further sum of £ of like lawful and current money, being the residue, and in full of the said purchase-money, at the time aforesaid, to the said *(assignees)* in hand well and truly paid by the said *(purchaser)* [with the privity and approbation of the said *(bankrupt)* testified as aforesaid], the payment of which said sum of £ as and for such residue, and also of the said sum of £ to the said *(mortgagee)* in discharge of his said mortgage as aforesaid, making together the sum of £ and being in full for the absolute purchase of the fee-simple and inheritance of and in the lands and hereditaments hereinafter described, the said *(assignees)* [and *(bankrupt)*] do hereby respectively acknowledge, [and of and from the same and every part thereof, do, and each of them doth acquit, release, exonerate, and for ever discharge the said *(purchaser)* his heirs, executors, administrators, and assigns,] and also the said messuages, lands, tenements, and hereditaments, by these presents, they the said *(assignees)* with the privity and by the direction of the said *(bankrupt)* testified as aforesaid, HAVE and each of them HATH bargained, sold, and released, AND by these presents Do, and each of them DOTH bargain, sell, and release, and so far as they safely can or may both at law and in equity, Do, and each of them DOTH grant and

PURCHASES.

Assignees and Mortgagee.

And in consideration of the residue of the purchase money.

The assignees bargain and sell.

PURCHASES. confirm: AND for the considerations aforesaid,

Assignees and Mortgagee.

[and in consideration of the sum of *5s.* of like lawful and current money, to the said (*bankrupt*) at the same time in hand paid by the said (*purchaser*) the receipt whereof is hereby also acknowledged],

And the bankrupt grants and confirms.

he the said (*bankrupt*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL (1), &c. or howsoever otherwise (2) the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to; TOGETHER with all [houses, outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines,

The parcels.

General appurtenances.

Parcels. (1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2); and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

General words. (2) For general words applicable in different species of property, see INDEX, *voc.* GENERAL WORDS.

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quarries, rights and privileges of common of every kind, and all] and all manner of other rights, privileges, easements, advantages, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed], except (1), &c. (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said *(purchaser)* by virtue of bargain and sale to him thereof made by the said (*mortgagee, assignees*) and *(bankrupt)* (for five shillings consideration), by indenture bearing date on the day next before the day of the date of these presents, for the term of one year commencing from the day next preceding the day of the date of the same indenture (2), and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them; and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at

Reference to bargain and sale for a year.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Exceptions.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110. and No. XIV. p. 117.

Bargain and sale.

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law and in equity, of them the said (*mortgagee, assignees, and bankrupt*), and of every of them respectively, in, to, out of, or respecting the said hereditaments and premises, or any part thereof.

Grant of title deeds.

[TOGETHER with the said hereinbefore in part recited indenture of mortgage, and the counterpart thereof, and all other deeds, muniments, writings, and evidences of title whatsoever, which in anywise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of the said (*mortgagee, assignees, and bankrupt*) or any or either of them, their or his heirs or assigns, or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity; and true and attested copies,

And copies.

(duly stamped), when and as the said (*purchaser*) his heirs or assigns, shall require the same, of all deeds, muniments, and writings, (not being of record) so in their or any or either of their possession, custody, or power, or which can or may be procured without action or suit as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies,

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Schedule of deeds.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

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when first required, to be made and delivered at the expense of the said (*assignees*) or the estate of the said (*bankrupt*); but all future copies to be made and taken at the expense of the person or persons requiring the same]. To HAVE AND TO HOLD (1) the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereby granted, and released, or otherwise assured, or intended so to be, unto the said (*purchaser*) his heirs or assigns, "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (2)," freed and absolutely discharged and exonerated of and from the said principal sum of £ and all interest thereof, and also of and from the said annuity or yearly rent charge of £ and all arrears thereof, and of and from all other charges and incumbrances whatsoever, except as hereinafter is expressed. AND the said (*mortgagee*) for himself, &c. (*covenant by the mortgagee that he has*

To HOLD to the purchaser in fee.

(1) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

And add the limitation referred, *ante*, No. XXXI. p. 10. n. (3).

PURCHASES.

not incumbered) (1). AND the said (*assignees*) do, &c. (*covenant by the assignees that they have not incumbered*) (2). AND the said (*bankrupt*) (3) for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, to and with the said (*purchaser*) his heirs and assigns, in the manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, or suffered, by him the said (*bankrupt*) (4), [or by them the said (*mortgagee, and assignees*) or any or either of them], to the contrary, they the said (*assignees, mortgagee, and bankrupt*), or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully, and rightfully, seised of or well entitled to all and singular the messuages, lands, tenements, hereditaments, and pre-

Assignees and Mortgagee.

Covenants by bankrupt for title, &c.

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(1) See *ante*, p. 134.

(2) See *ante*, p. 303.

(3) As to a bankrupt entering into covenants for the title, &c. see *ante*, p. 291, n. (1).

Bankrupt entitled by devise, &c.

(4) If the bankrupt became entitled by devise; or by voluntary conveyance, as a marriage settlement, add,

"Or the said (*devisor*) deceased,"

or other person who was the last purchaser for a valuable consideration.

or by descent.

If by descent, add,

"Or any of his ancestors,"

and see Vol. I. No. XV. p. 141, n. (39); and No. XVI. p. 178, *et seq.* in notes.

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mises, hereinbefore granted and released, or otherwise assured or intended so to be, as of or for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, without there being any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited or set forth, save only and except, &c. (1). AND also, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*assignees, mortgagee, and bankrupt*) or some of them, now have in themselves, or one of them hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure all and singular the said hereditaments and premises, [hereinbefore granted, bargained, sold, and assigned, or otherwise assured respectively, or intended so to be], unto (2),

And have right to convey.

---

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Except, &c.

(2) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

And proceed,

"AND further, that all and singular the same here-

PURCHASES.

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That the purchaser shall quietly enjoy.

" and to the use and behoof, of" the said (*purchaser*) his heirs and assigns in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, " that he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon and after the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their rights, members, appendances, and appurtenances, and receive and retain the rents, issues, and profits, thereof, to and for his and their own proper use and benefit," without any manner of hindrance, interruption, claim, or demand whatsoever, by or from them the said (*mortgagee, assignees, and bankrupt*), or any or either of them, or their, or any or either of their heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein from, through, under, or in trust for

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ditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed, concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

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them, or any or either of them (1). And that free and clear, and clearly and absolutely discharged and exonerated, or by and at the expense of the said (*assignees*) or the estate of the said (*bankrupt*), effectually protected, and indemnified, of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time hereafter shall or may be made, created, executed, occasioned, or knowingly suffered by the said (*mortgagee, assignees, and bankrupt*), or any or either of them, or any other person or persons claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through,

Free from incumbrances.

---

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 338, n. (4).

Bankrupt entitled by devise, &c.

If the premises be on lease, see as referred to *ante*, p. 309, n. (2).

Leases.

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under, or in trust for them, or any or either of them, (1), or by or through their, or any or either of their acts, means, or defaults (2). AND moreover, [*Add covenant for further assurance* (3)]. IN WITNESS (4), &c.

Bankrupt entitled by devise, &c.

(1) If the bankrupt took by devise, voluntary conveyance, or descent, see *ante*, p. 338, n. (4).

Leases.

(2) If the premises be on lease, see *ante*, No. XXXI. p. 27, notes.

(3) See *ante*, p. 39; n (1).

Production of deeds.

If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c.

(4) For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

No. XLVIII.

Conveyance by Assignees of a Bankrupt, Mortgagee *in* Fee, *and* Annuitant *to a Purchaser.*

Variations *where the* Mortgage *was for a* Term (1).
Where the Conveyance is by the Representatives of a Mortgagee (2).
Where the Purchaser takes the Conveyance to Uses to bar Dower.

THIS INDENTURE of parts, made the day of in the year of the reign, &c. and in the year of our Lord

BETWEEN (*the mortgagee*) of, &c. (a mortgagee of the hereditaments hereinafter described) of the first part, (*the assignees*) of, &c. assignees of the estate and effects of (*the bankrupt*) of, &c. of the second part, (*the annuitant*) of, &c. (having an annuity chargeable upon the said hereditaments) of the third part, (*the annuitant's* Parties.

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(1) If the mortgage was for a term of years, see *ante*, No. XXXVII. p. 145. *et seq.* Term.

(2) If the conveyance is from the heir at law, or other representatives of a mortgagee deceased, see variations to No. XXXVI. p. 119, marg. " heir, &c." Representatives.

And if such heir, &c. be an infant, see ib. marg. " mortgagee infant."

PURCHASES.

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trustee) of, &c. (a trustee for the said (*annuitant*)) of the fourth part, the said (*the bankrupt*) (1) of the fifth part, and (*the purchaser*) of, &c. (who has become a purchaser of the same hereditaments (2) of the sixth part.

Recitals.

WHEREAS, &c. (3). AND WHEREAS the said principal sum of £ is still due and owing to the said (*mortgagee*) upon the said security, [and also the sum of £ for interest thereupon, up to the day of the date hereof, making together the sum of £ .] AND WHEREAS the said (*assignees*) in pursuance of the authorities vested in them by the said recited indenture of bargain and sale of the day of put up the said lands and hereditaments to sale by public auction [with others] (4) at on the

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(1) Bankrupt not compellable to be a party, see *ante*, p. 291, n. (1).

Wife of purchaser.

(2) If the purchaser be married, and his wife dowable, make a trustee party, as

"Being a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the part."

And vary the draft agreeably to No. XXXI.

Recitals.

(3) Recite here the mortgage if in fee, as *ante*, No. XXXVI. p. 120.

If the mortgage was for a term of years only, as in No. XXXVII. p. 145.

Recite the grant of annuity, as *ante*, No. XXXVIII. p. 170.

And the bankruptcy, &c. as *ante*, p. 292, *et seq.*

Private contract.

(4) If the premises were sold by private contract, see *ante*, p. 275.

Order of court.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4).

day of last past, when the said (*purchaser*) became and was declared to be the highest bidder and purchaser thereof, at the sum of £ , and thereupon paid into the hands of the auctioneer at such sale the sum of £ by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. AND WHEREAS it has been agreed, that the said sum of £ so due upon the said in part recited mortgage, shall be paid off, and also the said annuity or yearly rent-charge of £ be repurchased out of the said sum of £ . And the said (*mortgagee*) (*annuitant*) and (*bankrupt*), at the request of the said (*purchaser*), have respectively agreed to join in the conveyance and assurance to him of the said premises in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH (1) that in pursuance and part performance of the said agreement, and in consideration of the sum of £ of lawful and current money (2) of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*mortgagee*) in hand well and truly paid by the said (*purchaser*) at or immediately before the execution hereof, [with the

PURCHASES.

Assignees, Mortgagee, and Annuitant.

WITNESS, in consideration of the mortgage paid off.

(1) Of the WITNESSING part of a deed, see notes, Vol. I. No. XV. p. 123. *et seq.* also 4 Elem. Conv. 2d edit. p. 98, *et seq.* WITNESS.

(2) If the consideration be paid otherwise than in money; or at any other time than at the execution of the conveyance, see Vol. I. No. XVI. p. 165, n. (6). *et seq.* Consideration.

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privity and at and by the request and direction of the said (*assignees*) and (*bankrupt*) respectively, testified by their severally being parties to, and sealing and delivering these presents], the receipt of which said sum of £ , and that the same is in full payment and satisfaction of all principal, interest, and other monies due upon or in respect of the said hereinbefore in part recited mortgage security, the said (*mortgagee*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, exonerate, and discharge the said (*purchaser*) (*assignees*) and (*bankrupt*) respectively, and their respective heirs, executors, and administrators, by these presents], he the said (*mortgagee*) at the request and by the direction and appointment of the said (*assignees*) and (*bankrupt*) respectively, testified as aforesaid, and as to and concerning the estate and interest of him the said (*mortgagee*) under or by virtue of the said hereinbefore in part recited indenture of and such of the lands and hereditaments hereinafter described, as are comprised in the same indenture, HATH (1) granted, bargained, sold, released, and quitted claim, and by these presents (by way of conveyance only, and for or by way of warranty of title) DOTH grant, bargain, sell, release, and quit claim (2); AND for and in consideration of the

The mortgagee grants and releases.

Copyholds.

(1) If the premises are copyhold, see Vol. I. No. XVIII. If part copyhold, see *ib.* Nos. XX. XXI.

Mortgage for term.

(2) If the mortgage was for a term of years, see *ante*, No. XXXVII. p. 151.

Assignees, Mortgagee, and Annuitant.

In consideration, &c.

further sum of £ of like lawful and current money, other part of the said purchase-money or sum of £ to the said (*assignees*) in hand well and truly paid by the said (*purchaser*) at the time and with such privity and approbation, and so testified as aforesaid, (upon and for the trusts and purposes of the said in part recited indenture of the day of), and of the further sum of £ of like lawful and current money, at the same time well and truly paid by the said (*purchaser*) to the said (*annuitant*) as hereinafter is mentioned, being (together with the said sum of £ so paid by way of deposit as aforesaid) the residue and in full of the said purchase-money, or sum of £ they the said (*assignees*) [by and with the consent and direction of the said (*bankrupt*) testified as hereinbefore mentioned], and according to their respective estates and interests under or by virtue of the said hereinbefore in part recited indenture of bargain and sale of the day of HAVE and each of them HATH bargained, sold, released, and disposed of, and by these presents DO, and each of them DOTH bargain, sell, release, and dispose of; [and in consideration of the sum of five shillings of like lawful and current money at the same time paid by the said (*purchaser*) to him the said (*bankrupt*)] the payment of which said several sums at and by such request and direction as aforesaid, and that the said several sums, making together the sum of

Assignees bargain, sell, &c.

PURCHASES. £ are in full for the absolute purchase of the fee-simple and inheritance in possession of the messuages, lands, tenements, and hereditaments, by these presents granted and released, or otherwise assured, or intended so to be, discharged of all claim and claims for or on account of the said principal sum of £ or the interest thereof, and of the said annuity or yearly sum of £ or otherwise in respect of the same, or either of them, the said (*assignees*) [and (*bankrupt*) and each of them] do and doth hereby acknowledge, and of and from the same and every part thereof, do and doth release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said hereditaments by these presents, He the said (*bankrupt*) HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said (*purchaser*) and his heirs, ALL that, &c. (1) or howsoever otherwise, the said capital messuage or mansion-house, lands and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, or described;

Assignees, Mortgagee, and Annuitant.

Parcels.

Parcels. (1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

and also all other messuages, lands, tenements, and hereditaments (if any) comprised in the indenture of bargain and sale for a year, hereinafter referred to: TOGETHER with all [houses] (1), outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, and appurtenances, whatsoever, to the said capital messuage, lands, tenements, hereditaments, and premises, or any part thereof belonging, or in any wise appertaining, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, except, &c. (2). (ALL which messuage or tenements, lands and hereditaments, are now in the possession of, or legally vested in the said (*purchaser*), by virtue of a bargain and sale (3) for a year to him thereof, made by the said (*mortgagee*) (*bankrupt*), and (*assignees*), (for five shillings con-

PURCHASES.

Assignees, Mortgagee, and Annuitant.

General appurtenances.

Reference to the bargain and sale.

(1) For general words applicable in different species of property, see INDEX *voc.* GENERAL WORDS. General words.

(2) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108. Exceptions.

(3) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

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sideration), by an indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession), [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises], and all and singular the rents, issues, and proceeds thereof, to arise or become payable from the day of now last past. AND all the estate, right, title, interest, property, claim and demand whatsoever, of them the said (*mortgagee*), (*assignees*), and (*bankrupt*), respectively, (each granting separately as aforesaid, and not the one for the other, or the estate, right, title, or interest, of the other of them), in, to, or respecting the said hereditaments and premises or any part thereof: TOGETHER with all deeds, muniments, and writings whatsoever, in any wise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of them the said (*mortgagee*), (*assignees*), and (*bankrupt*) respectively, or of their respective heirs or assigns, or of any person or persons from whom they or any or either of them can or may procure the same, without action or suit at law or in equity, [and true and attested copies (duly stamped), when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all deeds, muniments, writings (not being of record), so in his or their custody or power, or which can or may be procured without

Grant of title deeds.

And copies.

Assignees, Mortgagee, and Annuitant.

action or suit as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value (1), such copies, when first required, to be made and delivered at the expense of the said (*assignees*) or of the estate of the said (*bankrupt*), but all future copies to be made and taken at the expense of the person or persons requiring the same]. To HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereby granted, and released, or otherwise assured, or intended so to be, unto the said (*purchaser*), his heirs or assigns, "to and for the use and behoof of him the said (*purchaser*), his heirs and assigns for ever" (3), freed and abso-

To HOLD to the purchaser in fee.

---

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

(2) Of the habendum of a deed, see Vol. I. No. XV. p. 136, notes; also 4 Elem. Conv. 2d edit. p. 111.

Habendum.

(3) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say,

Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

And add the limitation referred, *ante*, No. XXXI p. 10, n. (3).

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lutely discharged and exonerated of and from the said principal sum of £ and all interest thereof, and also of and from the said annuity or yearly rent charge of £ and all arrears thereof, and of and from all other charges and incumbrances whatsoever, except as hereinafter is expressed. AND the said (*mortgagee*), for himself, &c. [*Add covenant by the mortgagee that he has not incumbered*] (1). AND THIS INDENTURE FURTHER WITNESSETH, [*add release of the annuity, &c. &c.* (2).] AND the said (*bankrupt*) (3), for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare, to and with the said (*purchaser*), his heirs and assigns, in the manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered, by him the said (*bankrupt*) (4), to the contrary,

FURTHER WITNESS, Annuitant releases the annuity.

Covenant by bankrupt for title.

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(1) See *ante*, No. XXXVI. p. 134.

(2) See *ante*, No. XXXVII. p. 179, *et seq.*

Covenants.

(3) Of the covenant for title, &c. in a deed, see Vol. I. No. XV. p. 138, notes; also 4 Elem. Conv. 2d edit. p. 123.

And that the bankrupt is not obliged to enter into these covenants, see *ante*, p. 291, n. (1).

Bankrupt entitled by devise, &c.

(4) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement; add,

"Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

or by descent.

If by descent, add,

"Or any of his ancestors."

And see Vol. I. No. XV. p. 141, n. (39.): and No. XVI. p. 178, *et seq.* in notes.

they the said (*bankrupt, mortgagee, assignees, annuitant, and trustee*), or some or one of them, at the time of the sealing and delivery of these presents, are or is lawfully and rightfully seised of, or well entitled to, all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured or intended so to be as aforesaid, as of, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, other than as hereinbefore is particularly recited or set forth, save only and except, &c. (1). And also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*bankrupt, mortgagee, assignees, annuitant, and trustee*), or some of them now have in themselves, or one of them hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, assign, and assure all and singular the said hereditaments and premises, hereinbefore granted, bargained, sold, and assigned, or otherwise assured respectively, or intended so

PURCHASES.

Assignees, Mortgagee, and Annuitant.

And have right to convey.

(1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427. Except, &c.

PURCHASES.

Assignees, Mortgagee, and Annuitant.

That the purchaser shall quietly enjoy.

to be, unto (1), "and to the use and behoof of the said (*purchaser*), his heirs and assigns, in the manner aforesaid," and according to the true intent and meaning of these presents. And further, "that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their rights, members, appendances and appurtenances, and receive and retain the rents, issues, and profits, thereof, to and for his and their own proper use and benefit," without any manner of hindrance, interruption, claim, or demand whatsoever, by or from the said (*bankrupt, mortgagee, assignees, annuitant, and*

Uses to bar dower.

(1) If the conveyance be to uses to bar dower, instead of the words within inverted commas, say,

"Unto the said (*purchaser*) and his heirs, to and for the uses, intents, and purposes, and in the manner and form hereinbefore expressed concerning the same."

And proceed,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes so hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner," &c. *as in the text.*

PURCHASES.

Assignees, Mortgagee, and Annuitant.

trustee) or any or either of them, or their, or any or either of their heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein from, through, under, or in trust for him, them, or any or either of them (1). And that free and clear, and fully clearly and absolutely discharged and exonerated, or by and at their or some or one of their costs and charges, or by the estate and effects of the said (*bankrupt*) effectually protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, and reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore

Free from incumbrances.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 199, n. (1).

Bankrupt entitled by devise.

If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

Leases.

PURCHASES.

Assignees, Mortgagee, and Annuitant.

have been, or at any time hereafter shall or may be made, created, executed, occasioned, or knowingly suffered by the said (*bankrupt, mortgagee, assignees, annuitant, and trustee*), or any or either of them, or any other person or persons claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them, or any or either of them (1), or by or through his, their, or any or either of their acts, means, or defaults (2). AND moreover, [*Add covenant by Bankrupt for further assurance* (3)]. IN WITNESS (4), &c.

Bankrupt entitled by devise, &c. Leases.

(1) If the vendor took by devise, voluntary conveyance, or descent, see *ante*, p. 199, n. (1).

(2) If the premises be on lease, see *ante*, No. XXXI. p. 25, notes.

(3) See *ante*, p. 164.

Production of deeds.

(4) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39; also p. 106, or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196.

Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

No. XLIX.

Conveyance by Trustees *under a* Conveyance *in* trust *to sell to* Trustees empowered *by a* Will *or* Marriage Settlement *to purchase Lands.*

Variations *where the* cestuis que trust *are parties.*

THIS INDENTURE, of three parts, made the day of , in the year of the reign, &c. and in the year of our Lord BETWEEN (*the selling trustees*) of, &c. (trustees for sale of the hereditaments hereinafter described) of the first part, (*the cestuis que trust*) (1) or *persons whose consent is requisite for the sale or purchase of*, &c.) of the second part, and (*the purchasing trustees*) of, &c. (who have contracted for the purchase of the same hereditaments by virtue of a power hereinafter Parties.

(1) If the consent of third persons be necessary, in order to enable the vending trustees to sell, or the purchasing trustees to invest the trust money in the purchase of land, they will be necessary parties unless their consent has been given by a separate instrument, see *ante*, p. 204, n. (1). Cestuis que trust parties.

PURCHASES.

Trustees for Sale to Trustees.

mentioned) of the third part. WHEREAS, &c. (1). AND WHEREAS, (2), by indentures of lease and release bearing date respectively on or about the and days of which was in the year . The release being of parts, and made or expressed to be made between, &c. (and being or purporting to be a settlement made on the marriage of the said ( ) with the said ( ) his wife, the sum

Recital of marriage settlement empowering trustees to purchase lands.

Recitals.

(1) Recite here the deed or will by which the lands are conveyed to the trustees for sale, as *ante*, No. XL. p. 206.

Devisees.

(2) If the purchasers are devisees under a will, recite the will, as

Recital of will.

"AND WHEREAS the said *(testator)* by his last will and testament in writing, bearing date the day of which was in the year , gave and bequeathed the sum of £. three per cent consol. bank annuities unto the said *(trustees)*, their executors, administrators, and assigns, upon trust to make sale, &c. *as in the text.* AND WHEREAS the said *(testator)* afterwards departed this life without revoking or altering his said will, and the same was soon after his decease duly proved by the said *(trustees)*, his executors therein named, in the prerogative court of the Archbishop of Canterbury, and thereupon the said *(trustees)* caused the said £ three per cent consol. bank annuities, to be transferred into their joint names in the books of the Governor and Company of the Bank of England, upon the trusts, and for the intents and purposes of the said will. And whereas the said *(trustees)* in pursuance of the directions or authority contained in the said in part recited will have contracted with," &c. *as in the text.*

Recital of power of purchase.

As the settlement or will in which the trustees' authority to purchase is contained will be in their own custody, the recital of it is no farther proper than to testify the requisite consent of the present cestui que trusts to the investment of the money on land, should it be questioned by persons entitled to it in remainder after their decease.

PURCHASES.

Trustees for Sale to Trustees.

of £ . three per cent consols, bank annuities, was transferred into the names of the said (*purchasers*) in the books of the Governor and Company of the Bank of England, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations thereinafter expressed concerning the same. And in the said indenture of release was contained a proviso or agreement that it should be lawful for the said (*purchasers*) and the survivor of them, his executors and administrators, and for all or any other trustee or trustees, for the time being, of the said trust property, with the consent and approbation in writing of the said (*husband and wife*) (or other *celles que trusts*) at any time during their joint lives, or with the like consent and approbation of the survivor of them, at any time during his or her life, and after the decease of such survivor, then during the minority of any child or children of the said marriage, at the sole discretion of the said trustees or trustee, to make sale, dispose of, transfer, and convert into money, the said £ three per cent. consolidated bank annuities, or any part thereof, for the then current or market price of the same, and lay out, apply, and invest the money arising, or to be produced thereby, in the purchase of any freehold or copyhold messuages, lands, tenements, or hereditaments, in that part of the United Kingdom of Great Britain and Ireland called England, or within the principality of Wales, of an estate of inheritance in fee-simple

PURCHASES. *Trustees for Sale to Trustees.*

in possession, to be settled, conveyed, and assured by the said (*purchasers*) or the survivor of them, or his heirs, to such or the like uses, upon such or the like trusts, and to and for such or the like ends, intents, and purposes, and under and subject to such or the like powers, provisoes, declarations, and agreements, as therein mentioned concerning the said bank annuities, and the dividends and interest thereof, or as near thereto as the nature of the said property and other circumstances would permit, or to, for, upon, and subject to such and so many of them as should then be undetermined, and capable of taking effect. AND WHEREAS the said (*vendors and purchasers*) in pursuance of the powers, trusts, or authorities in them severally reposed or vested by the said hereinbefore in part recited indentures of the day of and day of , and with and by such consent and approbation as therein is required for those purposes respectively (testified by the said (*celles que trusts*) being respectively parties to and signing and sealing these presents) have agreed for the sale and purchase (1) of the messuages, lands, and hereditaments, hereinfter described, (part of the lands and hereditaments comprised in the said indenture of the day of ,) at the sum of £ , and the said (*purchasers*) have requested that the same may be conveyed and assured to them in the manner and upon the trusts hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pur-

WITNESS, that in consideration of the purchase money.

Auction.

(1) If the sale was by public auction, see *ante*, No. XXXI. p. 4, n. (1).

PURCHASES.

Trustees for Sale to Trustees.

suance and execution of the said contract, and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendors*) upon and for the trusts and purposes of the said in part recited indenture of the day of , in hand well and truly paid, by the said (*purchasers*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession, of the messuages, lands, tenements, and hereditaments hereinafter described, the said (*vendors*) do hereby acknowledge, [and of and from the same do and each of them doth absolutely acquit, release, discharge, and exonerate the said (*purchasers*) their heirs, executors, administrators, and assigns, and every of them, and the said messuages, lands, tenements, and hereditaments, by these presents,] they the said (*vendors*) in pursuance and execution of the trusts so in them reposed or vested and with such consent and approbation so testified as aforesaid, HAVE and each of them HATH bargained, sold, aliened, and released, and by these presents, Do and each of them DOTH bargain, sell, alien, and release, and by way of conveyance only, and not for or by way of warranty of title, DO, and DOTH grant and confirm, and &c. (1)

The trustees grant, release, &c.

(1) If the celles que trusts be necessary parties, add a confirmation by them, as *ante*, No. XLI. p. 236.

Cestui que trusts parties.

PURCHASES. unto the said (*purchasers*) and their heirs, ALL, (1), &c. or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished, and also all other the messuages, lands, tenements, and hereditaments, (if any), which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to. TOGETHER with all [houses, (2), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, lands covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common of every kind,] and all and all manner of [other] rights, privileges, easements, appendances, and appurtenances whatsoever, to the said hereditaments and premises, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied or enjoyed,] (ALL which said hereditaments are now in the actual possession of, or legally vested in the said (*purchasers*)

Trustees for Sale to Trustees.

General appurtenances.

Parcels. (1) Here describe the lands, &c. by their ancient and present name, situation, tenancy, &c.

General words. (2) For general words applicable to different kinds of real property, see INDEX, *voce* GENERAL WORDS.

by virtue of a bargain of sale (1) to them thereof made by the said (*vendors*) for five shillings consideration by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture; and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, of and in the said hereditaments; and all and singular the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, [both at law and in equity], of them the said (*vendors*) respectively, as trustees, as aforesaid, and of them the said [*cestui que trusts*] respectively, of, in, to, or concerning the same or any part thereof. [TOGETHER with all deeds, muniments, writings, and other evidences of title whatsoever, in anywise relating thereto or to any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendors*) or of either of them, or of any person or persons from whom they or either of them can or may procure the same without action or suit at law or in equity; and true and attested copies, duly stamped, when required by the said (*purchasers*) or either of

PURCHASES.

Trustees for Sale to Trustees.

Grant of title deeds.

Copies.

(1) See the form of this bargain and sale, No. XIII. p. 110. and No. XIV. p. 117.

Bargain and sale.

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Trustees for Sale to Trustees.

them, or other the trustees or trustee of the said trust estates for the time being, or any *cestui que trust* thereof, of all other deeds, muniments, writings, and evidences, (not being of record), which now are or hereafter shall or may be so in their or either of their possession, custody, or power as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value, such copies when first required, to be made and delivered at the expense of the said (*vendors*) or their trust estate; but all future copies to be made and taken at the expense of the person or persons requiring the same.

To HOLD to the purchasers in trust, &c.

To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendances, and appurtenances unto the said (*purchasers*) their heirs and assigns (1), freed and absolutely exonerated and discharged from all and every the estates, uses, trusts, powers, provisoes, declarations, and agreements in or by the said in part recited indenture of the day of declared concerning the same or the purchase

(1) Or, *if the case require it*,

"To the use and behoof of them the said (*purchasers*) their heirs and assigns for ever, but upon the trusts," &c. (*as in the text*).

money thereof; but nevertheless to the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, limitations, and agreements hereinafter declared or expressed concerning the same, that is to say, TO THE USE, &c. (1), and to or for no other uses, trusts, in-

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(1) Here insert the limitations to the *cestui que trusts*, &c. agreeably to the settlement or will; unless where the uses, &c. are fully set out in the deed or will directing the purchase, and are such as will accord with the nature of the land, &c. purchased, in which case the limitation may be,

Declaration of trusts or uses.

"To the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, and limitations, in or by the said hereinbefore in part recited indenture, (*or* will) declared or expressed of or concerning the lands and hereditaments thereby directed to be purchased as aforesaid, or such and so many of them as are now in being, or capable of taking effect, and to or for no other uses, trusts, intents, or purposes whatsoever."

But in the other cases it will be proper to set out the particular estate, &c. which the *celles que trusts* are intended to take.

Or it may be,

"But upon such and the same trusts, nevertheless, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, limitations, agreements, and declarations respectively, as in or by the said hereinbefore in part recited indenture (*or* will) of the day of is declared or expressed concerning the said sum of £ and the dividends and interest thereof, and the lands so thereby directed to be purchased therewith as aforesaid, or such and so many of them as now are, or is undetermined and

PURCHASES.

Trustees for Sale to Trustees.

Covenant by cestui que trusts for title, &c.

tents, or purposes whatsoever (1). AND the said (*selling trustees*) for themselves, &c. (*covenant that they have not incumbered* (2).) AND the said (*celles que trusts*) for themselves, &c. (*covenants for the title* (3).) AND further, that all and singular the same hereditaments and premises, with their and every of their rights, members, appendants, and appurtenances, shall and may henceforth and from time to time, and at all times hereafter, remain and be, to the uses, upon the trusts, and to and for the ends, intents, and purposes hereinbefore expressed or referred to concerning the same, and be entered into and upon, and had, holden, possessed, and enjoyed, and the

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capable of taking effect, or as near thereto as the rules of law and equity, and the different natures or quality of the said respective properties will admit, and to or for no other uses, trusts, intents, or purposes whatsoever, and to pay, apply, and dispose of the said issues and profits thereof accordingly."

Or the limitation may be,

"Upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, and limitations hereinafter declared or expressed concerning the same, (that is to say) UPON trust," &c. *(pursuing the words of limitation, &c. in the deed or will directing the purchaser, or as near thereto as the nature of the property will admit).*

Copyholds.

(1) If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here. See the form of such covenant, *ante*, No. XVIII. p. 266; and make such additions to this and the subsequent covenants as will be found in those of No. XX. p. 269, *et seq.*

(2) See *ante*, No. XL. p. 215, and notes.

(3) See *ante*, No. XLI. p. 241.

PURCHASES.

Trustees for Sale to Trustees.

rents, issues, profits, and proceeds, to arise or be payable for or in respect of the same, be received and applied accordingly, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*celles que trust*) or any or either of them, or any person or persons now or hereafter claiming or possessing any estate, right, title, or interest, [at law or in equity], in, to, or concerning the same, or any part thereof, from, through, under, or in trust for them, or or any or either of them. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*vendors*) or their said trust estate, effectually defended, protected, and indemnified, from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or

Free from incumbrances.

PURCHASES.

Trustees for Sale to Trustees.

times heretofore or hereafter have been, or shall or may be made, created, executed, or committed, or knowingly occasioned, or suffered by the said (*trustees*) and (*celles que trusts*), or any or either of them, or the said (*settler*, or *devisor*,) or any other person or persons, now or hereafter rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, or in trust for them, or any or either of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity, except, &c. (1). AND moreover, that they the said (*celles que trusts*), and all and every person or persons, now or at any time hereafter rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises, hereby granted, released, and confirmed, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for them, or any or either of them, or the said (*settler*, or *devisor*), shall and will, &c. [*Add covenant for further assurance* (2)]. IN WITNESS, &c. (3).

Covenant for further assurance.

Except, &c. (1) If the premises are subject to any incumbrance, except it here, and see Vol. I. p. 212. 427.

Leases. If the premises be on lease, see *ante*, No. XXXI. p. 27.

(2) As *ante*, p. 164.

Outstanding term. (3) If there be an outstanding term, which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 24. n. (1).

Rent charge. If the premises are subject to a rent-charge, or the like, see Vol. I. p. 212. 427.

If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Trustees for Sale to Trustees.

Production of deeds.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations Vol. I. No. XVI. p. 188, *et seq.*

Provisoes, &c.

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. 28, *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88, *et seq.*

No. L.

Conveyance by Trustees *selling by Virtue of a* Power of Sale, *to* Trustees *purchasing by Virtue of a* Power *to invest Money on Land.*

THIS INDENTURE of parts, made the day of , in the year of the reign (1), &c. and in the year of our Lord .

Parties. BETWEEN (*the trustees for sale*) of, &c. (trustees for sale of the hereditaments hereinafter described), of the first part, (*the tenant for life or other celles que trusts of the hereditaments sold*) of, &c. (beneficial owners of the same hereditaments, [*or* persons interested in the produce to arise by sale thereof,] *as the case may be*) of the second part, (*the celles que trusts*) of, &c. (being persons interested in the said hereditaments on the purchase thereof) of the third part, and (*the purchasing trustees*) of, &c. (trustees empowered to purchase the same, as hereinafter

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(1) Recite the deed or will directing or authorising a sale of the premises, see *ante*, p. 204, *et seq.*

expressed) of the fourth part. WHEREAS, &c. AND WHEREAS by indentures of lease and release, bearing date respectively, &c. (1) AND WHEREAS the said (*celles que trusts*) are both still living (*or as the case may be*). AND WHEREAS the said (*trustees for sale*) with the consent and approbation of the said (*their celles que trusts*) testified by their being parties to, and severally signing and sealing these presents, have contracted (2) with the said (*purchasing trustees*) (in pursuance of the power or authority vested in them on that behalf as aforesaid) for the absolute sale to them of the inheritance in fee-simple of and in the lands and hereditaments hereinafter described, (being the lands and hereditaments (or part or parcel of the lands and hereditaments, *as the case may be*) comprised in the firstly hereinbefore in part recited indenture of the day of) free from incumbrances (other than as hereinafter is mentioned) at the sum of £ and for the greater satisfaction of the said (*purchasing trustees*) the said (*their celles que trusts*) have agreed to join in the conveyance to them thereof in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for enabling the said (*trustees for sale*)

PURCHASES.

Trustees to Trustees under Power.

Recital of contract for purchase.

WITNESS. The trustees revoke the old uses.

(1) Recite the instrument in which the power of purchase is contained, see *ante*, p. 358. Recitals.

(2) If the premises were sold by *public auction*, see *ante*, No. XXXI. p. 4, n. (1). Auction.

If by order of court, see Vol. I. No. XVI. p. 163, n. (4). Order of court.

PURCHASES.

Trustees to Trustees under Power.

to carry the same into effect, and in pursuance and by virtue of the power and authority given to or vested in them in or by the said hereinbefore in part recited indenture of release, of the day of [and of all and every other power and powers, authority and authorities whatsoever, in any wise enabling them or either of them thereto], and in exercise and execution of the same, they the said (*trustees for sale*) with the consent and approbation, and by the direction of the said (*their celles que trusts*) testified by their severally being parties to, and signing and sealing these presents (1) HAVE revoked, determined, and made void, and by this present deed or instrument in writing, by them sealed and delivered in the presence of two credible persons, whose names are or are intended to be hereupon indorsed as witnesses attesting the same, Do, and each of them DOTH absolutely revoke, determine, and make void, all and every the uses, trusts, estates, powers, provisoes, and limitations, in and by the said hereinbefore in part recited indenture of release, of the day of limited, created, declared, or expressed, so far as the same or any of them relate to or concern the messuages, lands, tenements, and hereditaments, hereinafter particularly described, and

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Assent of celles que trusts.

(1) Care must be taken that the assent of the *celles que trusts*, if necessary, be testified in the manner required by the power of sale.

PURCHASES.

Trustees to Trustees under Power.

mentioned, or intended to be hereby limited and appointed, and granted, and released, (save only and except the power to revoke, and limit and appoint, as in these presents is expressed.) AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance, exercise, and execution of the power and authority given to or vested in them the said (*trustees for sale*) by the said hereinbefore in part recited indenture of release, of the day of [and of all and every other power and powers, authority and authorities, for this purpose in them vested, or in any wise enabling them thereunto,] and for and in consideration of the sum of £ of good, lawful, and current money of that part of the United Kingdom of Great Britain and Ireland, called England, at or immediately before the sealing and delivery of these presents, to them in hand well and truly paid by the said (*purchasing trustees*) (by and with the consent, approbation, and direction of the said (*their celles que trusts*) testified as aforesaid), the payment of which said sum of £ to the said (*trustees for sale*) and that the same is in full for the absolute purchase of the fee simple in possession of the lands and hereditaments hereinafter described, the said (*trustees for sale*) and (*their celles que trusts*) do hereby severally and respectively acknowledge, and of and from the same and every part thereof do, and each of them doth acquit, release, exonerate, and for ever discharge the said (*purchasing trustees*) their heirs, executors, administrators, and

FURTHER WITNESS, in consideration of the purchase money.

PURCHASES.

Trustees to Trustees under Power.

assigns, and also the said lands and hereditaments, by these presents, They the said (*trustees for sale*) HAVE, and each of them HATH limited, declared, directed and appointed, and by this present deed or writing so by them sealed and delivered, and so attested as aforesaid, Do limit, declare, direct, and appoint (1), that all and singular the messuages, lands, tenements, and hereditaments hereinafter particularly described, and mentioned to be granted and released or otherwise assured, and concerning which the uses, trusts, estates, powers, and limitations created or contained in or by the said hereinbefore in part recited indenture of release, of the day of have been hereinbefore revoked, determined, and made void or expressed or intended so to be as aforesaid, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, shall from henceforth be and remain, and the said in part recited indenture of release, and all other conveyances and assurances of the same messuages, lands, tenements, and hereditaments, shall be and enure unto the said (*purchasing trustees*), their heirs and assigns for ever, freed, exonerated, released, and absolutely discharged of and from all and every the uses, trusts, estates, powers, provisoes, and limitations, in and

The trustees appoint to the purchasing trustees.

Copyholds.

(1) If the premises are copyhold, see Vol. I. No. XVIII. If part copyhold, see *ib.* Nos. XX. XXI.

Outstanding term.

If there be an outstanding term to be surrendered, see *ante*, No. XXXI. p. 6. n. (1).

by the said in part recited indenture of release and settlement, of the day of expressed and declared of or concerning the same. PURCHASES.

Trustees to Trustees under Power.

AND THIS INDENTURE FURTHER WITNESSETH, that for further assuring the said messuages, lands, and hereditaments, unto the said (*purchasing trustees*) and their heirs, and for the considerations aforesaid, and also for and in consideration of the sum of ten shillings, of such lawful and current money as aforesaid, in hand well and truly paid by the said (*purchasing trustees*) to the said (*trustees for sale*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they the said (*trustees for sale*) at the like request, and with and by the like consent, approbation, and direction of the said (*their celles que trusts*) testified as hereinbefore is mentioned, HAVE, and each of them HATH granted, bargained, sold, released, conveyed, and disposed of, and by these presents Do, and each of them DOTH grant, bargain, sell, release, convey, and dispose of, [but so and in such manner nevertheless, that they the said (*trustees for sale*) or either of them, shall not be construed in any wise to create or enter into any covenant or warranty for the title of the said hereditaments, but to convey the same according to their respective estates and interests only, and so far and in such manner only as they lawfully can or ought as trustees as aforesaid;] and they the said (*celles que trusts*) according to their respective estates and interests under or by virtue of the said hereinbefore in part recited indenture

FURTHER WITNESS, the trustees release, &c. to the purchasing trustees.

And the celles que trusts confirm.

PURCHASES. of the day of HAVE, and each of them HATH granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents DO, and each of them DOTH grant, bargain, sell, alien, release, ratify, and confirm, unto the said *(purchasing trustees)* and their heirs, ALL, &c.(1), or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to, (being the several [*or* part and parcel of the several, (*as the case may be*)] messuages, lands, tenements, and hereditaments, so conveyed to the said (*trustees for sale*) in and by the said hereinbefore in part recited indentures of lease and release of the and days of as aforesaid); TOGETHER with [all houses (2), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards,

Trustees to Trustees under Power.

Parcels.

General appurtenances.

Parcels. (1) As to the mode of describing the parcels, see Vol. I. No. XV. p. 128, n. (13); No. XVI. p. 172; and No. XXVII. p. 485, n. (2), and *ante*, No. XXXI. p. 6, n. (2); also 4 Elem. Conv. 2d edit. p. 104.

General words. (2) See general words applicable to different species of real property, INDEX *voc.* GENERAL WORDS.

ponds, waters, land covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, and of feeding and foldage of every kind, and all and all] manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, except, &c.(1); (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally and fully vested in the said *(purchasing trustees)* by virtue of a bargain and sale to them thereof made by the said *(trustees for sale)* and *(their celles que trusts)* for five shillings consideration, by indenture (2) bearing date on the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, to commence from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession), and the

PURCHASES.

Trustees to Trustees under Power.

Reference to the bargain and sale for a year.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Exceptions.

(2) See the form of this bargain and sale, Vol. I. No. XIII. p. 110, and No. XIV. p. 117.

Bargain and sale.

PURCHASES.

Trustees to Trustees under Power.

reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, or any part thereof, from the day of now last past. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of them the said *(trustees for sale)* and (*their celles que trusts*) and of each of them respectively, in, to, out of, upon, or respecting the said hereditaments and premises, or any of them; [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of them the said (*trustees for sale*) and (*their celles que trusts*) or of any or either of them, their or his heirs or assigns, or of any person or persons from whom they, or any or either of them, can or may procure the same, without action or suit at law or in equity; and true and attested copies (duly stamped) when and as the said (*purchasing trustees*) their heirs and assigns, shall require the same, of all other deeds, muniments, writings, and evidences, (not being of record), so in their, or any or either of their possession, power, or custody, as aforesaid, in any wise relating to the same hereditaments and pre-

Grant of title deeds.

And copies.

mises, or any of them, jointly with other hereditaments or property of equal or greater value (1); such copies, when first required, to be made and delivered at the expense of the said *(trustees for sale)* and *(their celles que trusts)* or some or one of them, their or his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the said *(purchasing trustees)*, their heirs or assigns, or other person or persons requiring the same. To HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and premises hereinbefore and in said indenture of bargain and sale described, and hereby limited and appointed, and granted, and released, or otherwise assured, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said *(purchasing trustees)* and their heirs, to the use and behoof of them the said *(purchasing trustees)* their heirs and assigns for ever; but nevertheless upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, limitations, agreements and declarations respectively, as in and by the said hereinbefore in part recited indenture of release, of the day of are

PURCHASES.

Trustees to Trustees under Power.

To hold to purchasing trustees on the trusts in second indenture of settlement mentioned.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"And whether mentioned in the schedule here underwritten or hereunto annexed or not."

PURCHASES.

Trustees to Trustees under Power.

declared or expressed concerning the said sum of £ and the lands so thereby directed to be purchased therewith as aforesaid, or such and so many of them as now are, or hereafter may be capable of taking effect, and as are or may be good, valid, or supportable, by the rules of law or of equity, and to or for no other uses, trusts, intents, or purposes whatsoever. AND the said (*trustees for sale*) for themselves, &c. (*covenant by the selling trustees that they have not incumbered*)(1).

Covenant by the trustees that they have not incumbered.

Covenant by celles que trusts for the title.

AND the said (*celles que trusts*) for themselves severally and respectively, &c. (*Add covenants by the celles que trusts for the title*) (2). IN WITNESS, &c. (3).

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(1) See *ante*, p. 215.

(2) See *ante*, p. 241.

Production of deeds.

(3) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, in notes, and p. 196.

Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158, n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.*, also 4 Elem. Conv. 2d edit. p. 88, *et seq.*

PURCHASES.

Purchase Money secured on the Estate.

No. LI.

Conveyance by a Vendor to a Purchaser where Part of the Purchase Money *is suffered to remain upon the* Security *of the Premises.*

Variations *where the Security is made by a* separate *Mortgage.*

Also *where the* whole *of the Purchase Money is so secured.*

And where the Purchase Money secured on the Premises is to be paid off by Instalments.

THIS INDENTURE of parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (1) *(the vendor)* of, &c. of the first part, *(the purchaser)* of &c. of the second part, and *(a trustee)* (2) of, &c. (a trustee

Parties.

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(1) If the vendor be *tenant in tail*, see *ante*, Vol. I. No. XXII. If entitled to a *moiety* or other *undivided part*, see *ib.* No. XXVI.

Tail. Moiety, &c.

If the vendor be married, and his wife entitled to dower, make her a party with her husband.

Wife of vendor.

(2) Where a purchaser cannot pay down the whole of the purchase money, and makes a mortgage to the vendor or other person for the residue, a usual way is to make the conveyance immediately to the purchaser to the use of the vendor (or mortgagee) either in fee or for a term; see Brade, P. Bk. p. 62. But

Securing purchase money.

PURCHASES.

Purchase Money secured on the Estate.

Recitals.

named and appointed for the purposes hereinafter mentioned) of the third part. WHEREAS, &c. (1). AND WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of the fee-simple and inheritance of the said lands and hereditaments, for the sum of £ free from incumbrances, (except as hereinafter is expressed) (2). AND WHEREAS it not being convenient for the said (*purchaser*) to pay down

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the more proper mode seems to be (whether both the purchase and mortgage be carried into effect by the same deed, which it may be, and frequently is, or by different deeds) for the conveyance to be taken to a trustee to the use of such vendor (or mortgagee) for a term or in fee, and not to the vendor himself. And the covenant for the title must be with such trustee; for as the purchaser must, according to the established practice, enter into general or absolute covenants with the vendor for the title, upon his assuming the character of a mortgagor, and as he took limited covenant only from his vendor, these latter covenants, if the purchaser covenants with the vendor himself, will be extinguished, and the benefit of them lost, if the mortgage be in fee, and if for a term, will be suspended during such term: and by making the conveyance to a trustee the danger will be avoided of the premises becoming liable to any judgment or other subsisting incumbrances of the purchaser, which might attach upon them, on their being vested in him.

(1) Recite the seisin or title of the vendor.

Purchase money to be paid by instalments.

(2) If the purchase money is to be paid by instalments, and secured on the estate, in the mean time, say

"AND WHEREAS it has been agreed that the said purchase money shall be paid by several instalments of £ each, at and upon the days and times hereinafter mentioned, and that such payments with interest after the rate of £5 per cent. per annum, in the mean time shall be secured upon the said premises in the manner hereinafter expressed."

PURCHASES.

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the whole of the said purchase money, the said (*vendor*) hath agreed, that the sum of £ part of the said purchase money, (*or* that the said purchase money), shall be secured upon the said premises, and that the same shall for that purpose be conveyed to the said (*trustee*) to the uses hereinafter expressed (1). Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration (2) of the

WITNESS, that in consideration of £ now paid.

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(1) If the security is intended to be by a separate mortgage (for the form of which see Vol. IV.) instead of the words within inverted commas, say

Purchase money secured by a separate deed.

"AND WHEREAS in pursuance of the said agreement the said lands and hereditaments, by indenture [or indentures] already prepared and engrossed, and made or expressed to be made between the said (*purchaser*) of the one part, and the said (*vendor*) of the other part, (*or as the case may be*), and bearing or intended to bear even date herewith, are intended forthwith and immediately upon the execution of these presents, to be conveyed and assured to the said (*vendor*) and his heirs, [*or* executors, or administrators] and assigns, in fee-simple, [*or* for the term of years, from the date hereof], subject to a proviso or agreement therein contained, for the redemption of the same premises, on repayment of the said sum of £ , with interest for the same, at the time and in the manner therein expressed, as by reference to the said indenture [or indentures respectively] will more fully appear."

(2) If the whole of the purchase money is to remain on the premises, say

The whole purchase money to remain on mortgage

"In consideration of the sum of £ being so secured to be paid by the said (*purchaser*), to the said (*vendor*) on the day of which will be in the year , together with interest for the same in the mean

PURCHASES.

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sum of £ of lawful and current money (1) of that part of the United Kingdom of Great Britain and Ireland, called England, (part of the said purchase money or sum of £) in hand well and truly paid to the said (*vendor*) by the said (*purchaser*) at or before the sealing and delivery of these presents, the receipt of which said sum of £ the said (*vendor*) doth hereby acknowledge, and of and from the same doth acquit, release, discharge, and exonerate the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said lands and hereditaments, by these presents, and also for and in consideration of the further sum of £ of like lawful and current money, being the residue of the said purchase money to be paid to the said (*vendor*) with interest, at the time and in the manner hereinafter mentioned (2) [and also for and in consideration of the sum of £

And residue secured as after mentioned.

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time, payable at the times and in the manner hereinafter (or in the said indenture) expressed, and also for and in consideration of 10*s*. of like lawful money to the said (*vendor*) in hand paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said (*vendor*) HATH granted, &c." *as above.*

Consideration bank annuities.

(1) If the consideration be a transfer of stock, see Vol. I. No. XV. n. (7).

Auction.

If the estate were sold by public auction, see *ibid.* n. (8).

Separate deed.

(2) If the money is intended to be secured by a separate instrument, say

"AT the time and in the manner mentioned for the pay-

of like lawful money in hand paid to the said (*vendor*) by the said (*trustee*), the receipt whereof is hereby acknowledged], He the said (*vendor*) at the request and by the direction of the said (*purchaser*), testified by his sealing and delivering these presents, HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (*trustee*) and his heirs, ALL (1), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, if any, which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to, and mentioned to bear date the day next before the day of the date hereof. TOGETHER with all [houses (2), outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens,

PURCHASES.

Purchase Money secured on the Estate.

Vendor grants and releases the land, &c.

Parcels.

General appurtenances.

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ment thereof in or by certain indentures of lease and release already prepared and engrossed, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date herewith, and made or expressed and intended to be made, &c."

(1) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. Parcels.

(2) See general words applicable to different kinds of real property, INDEX, *voce* GENERAL WORDS. General words.

PURCHASES.

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orchards, waters, land covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, and of feeding and foldage, of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed], (except, &c.) (1). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*trustee*) by virtue of a bargain and sale for a year (2) to him thereof made by the said (*vendor*) for five shillings consideration, by indenture bearing date on the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture; and by force of the statute made for transferring uses into possession), and the reversion and reversions, and remainder and remainders, of and in the said hereditaments and premises, and

Reference to the bargain and sale for a year.

Exceptions.

(1) If there be a right of way or other appurtenant to be excepted, insert such exception here. And see of exceptions in deeds, 4 Elem. Conv. 2d edit. p. 108.

Bargain and sale.

(2) See the form of this bargain and sale, *ante*, Vol. I. p. 110, 117.

every of them respectively; and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, or of any part thereof, from the day of now last past; AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of him the said (*vendor*) in, to, out of, upon or respecting the said hereditaments and premises, or any of them. [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same premises, or any part thereof, and which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity(1); and true and attested copies (duly stamped), when and as the said (*trustee*) or (*purchaser*), or their respective heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences which now are or hereafter shall or may be so in his or their custody or power as aforesaid, and which in anywise relate to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or

Purchase Money secured on the Estate.

Grant of title deeds.

And copies.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

Schedule of deeds.

"Whether mentioned in the schedule here under-written or hereunto annexed or not."

PURCHASES.

Purchase Money secured on the Estate.

greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the said (*purchaser*) his heirs or assigns.

To HOLD to the trustee and his heirs.

To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, and appurtenances, unto the said (*trustee*) and his heirs (1); but nevertheless to and

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Mortgage by separate deed.

(1) If the mortgage be made by a separate instrument, the conveyance, in order to prevent any existing charges upon the purchaser becoming a lien on the estate while in his hands, may be made to the trustee,

" Unto and to the use of the said (*trustee*), his heirs and assigns, but nevertheless upon the trusts, and to and for the ends, intents, and purposes hereinafter expressed concerning the same, that is to say, UPON TRUST that he the said (*trustee*) or his heirs, do and shall upon or immediately after the execution of these presents, when thereunto required, by indenture or indentures of mortgage either in fee simple or for a term of years of all and singular the same premises, well and effectually secure or cause to be secured unto the said (*vendor*) the payment of the said purchase money or sum of £ on the day of together with interest for the same, after the rate of £5 per cent. per annum, until payment thereof, and from and upon full payment and satisfaction thereof, and in the mean time, subject thereto and to the estate and interest to be granted or demised thereof, IN TRUST for the said (*pur-*

PURCHASES.

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for the uses, ends, intents, and purposes hereinafter expressed concerning the same, that is to say, TO THE USE of the said (*vendor*) his executors, administrators, and assigns, for and during the term of five hundred years (1), to be computed from the day next before the day of the date of these presents, without impeachment of or for any manner of waste, other than wilful and destructive waste, and with full power to commit waste other than as last aforesaid. SUBJECT nevertheless to the proviso or agreement for redemption and reconveyance of the said premises hereinafter con-

To the use of the vendor for 500 years.

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chaser), his heirs and assigns, and to be thenceforth and from time to time conveyed and assured, as he or they shall in writing under his or their hand or respective hands direct or appoint."

And when it is so made, the rest of this precedent will be omitted, except the usual covenants for the title, as in p. 393; but see the next note.

Mortgage by same deed.

(1) Where part of the purchase money is secured upon a mortgage of the premises, whether to the vendor himself or to a third person, a demise for a term is more proper on the part of the purchaser than a mortgage in fee, which would prevent the inheritance vesting in him until the mortgage be redeemed, whilst he now takes a vested fee, subject only to the term; and the security on the part of the mortgagee, particularly if accompanied by a covenant to convey the fee in case of failure to redeem, is fully equal to a mortgage of the fee in the first instance, and by devolving on the executors of the mortgagee, (who will in either case be entitled to the money) instead of his heirs, as a mortgage in fee would, it seems in every respect to be the more simple and appropriate form. And vid. Brad. Point. Bk. p. 62. pl. 132. Should, however, a mortgage by a separate deed be for any reason preferred, a form will be found in a subsequent volume. See *post*, Vol. V.

PURCHASES.

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And subject thereto, to the use of the purchaser in fee.

Proviso for redemption.

tained; AND from and after the expiration or other sooner determination of the said term of five hundred years, and also in the mean time subject only thereto, and to the payment of the said principal sum and interest, intended to be thereby secured, TO THE USE and behoof of the said (*purchaser*) his heirs and assigns for ever (1). PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, to be the true intent and meaning of them and of these presents, that if the said (*purchaser*) his heirs, executors, or administrators, [or any other person or persons on his or their behalf], do and shall well and

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Vendor's wife entitled to dower.

(1) If the wife of the vendor be entitled to dower, insert here a covenant to levy a fine, as *ante*, No. XXXI. p. 11, and declare the uses,

"In the first place for strengthening, corroborating, and confirming the said term of 500 years, hereby created, or mentioned or intended so to be, as hereinbefore is expressed, and subject thereto, and to the trusts, intents, and purposes thereof, to the only proper use and behoof of the said (*purchaser*), his heirs and assigns for ever."

Dower.

If the estate be intended to be limited for preventing dower, see *ante*, No. XXXI. p. 31; this may however generally be dispensed with, as the wife of the purchaser has no title to dower during the continuance of the mortgage, unless subject to the term, which on any future sale may be conveyed to a trustee for preventing dower. If, however, the term is declared to cease on the payment of the money, and not to attend the inheritance, such limitation may be proper, lest the estate should be redeemed on the day named in the proviso, in which case the term would become extinguished, and the wife's title to dower attach on the inheritance.

PURCHASES.

Purchase Money secured on the Estate.

truly pay, or cause to be paid unto the said (*vendor*) his executors, administrators, or assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, between the hours of ten and twelve of the clock in the day-time, the full and clear sum of £ of such lawful and current money as is aforesaid, with interest for the same, after the rate of £5 for every £100 by the year of like lawful money, upon the days and in the manner hereinafter mentioned, (that is to say) the sum of £ (1) being one half year's interest of or for the said sum of £ after the rate aforesaid, on the day of next ensuing the date of these presents, and the sum of £ being the said principal sum of £ and one other half year's interest of or for the same, after the rate aforesaid, on the day of then next following, and which will be in the year without any deduction or abatement whatsoever, for or by reason of any taxes, charges, assessments, cause, matter, or thing whatsoever, (which said sum of £ is the same sum of £ as is

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(1) If the purchase money is to be paid by instalments, say, "The said sum of £ part thereof, on the day of which will be in the year , together with interest for the whole of the said purchase money or sum of £ , up to that time, the further sum of £ other part thereof, together with interest for the same, and also for the then remaining sum of £ after the rate aforesaid, on the day of , &c."

Purchase money paid by instalments.

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mentioned in the condition of a certain bond or obligation in writing under the hand and seal of the said (*purchaser*) bearing or intended to bear even date with these presents), and also do and shall in the mean time, and until full payment and satisfaction of the said principal sum and interest, pay and satisfy, or cause to be paid and satisfied, all and all manner of annual and other rents, duties, taxes, rates, assessments, and charges whatsoever, which from time to time shall or may be payable for or in respect of the said premises, or any part thereof, then and from thenceforth the said term of five hundred years hereinbefore created shall cease, determine, and be utterly void to all intents and purposes whatsoever, [*or* then and from thenceforth and at any time thereafter upon the request, and at the costs and expense of the said (*purchaser*) his heirs, executors, administrators, or assigns, he the said (*vendor*) his executors, administrators, or assigns, shall and will surrender, yield up, assign, or otherwise assure all and singular the messuages, lands, tenements, hereditaments, and premises therein comprised, with their and every of their appurtenances, and also the then residue of the said term, for all his, her, and their estate, right, title, and interest therein and thereto, under or by virtue of these presents, unto or in trust for the said (*purchaser*) his heirs and assigns, or unto and for the benefit of such other person or persons, and for such intents and purposes as the said (*purchaser*), his heirs or assigns, shall direct or appoint; and

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that free and clear of and from all intermediate and other charges and incumbrances whatsoever, made, executed, or knowingly suffered, by him the said (*vendor*) his executors, administrators, or assigns, or any person or persons lawfully or equitably claiming from, under, or in trust for him, them, or any of them, so that for the making any such surrender, assignment, or other assurance, he the said (*vendor*) his executors, administrators, or assigns, be not required to go from his, her, or their then place or respective places of abode].

Covenant by vendor that he is seised in fee.

AND the said (*vendor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, declare, grant, and agree with and to the said (*trustee*) (1) his heirs and assigns, in the manner following, (that is to say) that { (2) for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*vendor*) (3), to the contrary } he the said (*vendor*) at the time of the sealing and delivery

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(1) See *ante*, p. 381, n. (2).

(2) These braces are for the purpose of subsequent references.

(3) If the vendor became entitled by devise; or by voluntary conveyance, as a marriage settlement; add,

Vendor entitled by devise, &c.

" Or the said (*devisor*) deceased."

Or other person who was the last purchaser for a valuable consideration.

If by descent, add,

or by descent.

" Or any of his ancestors,"

And see Vol. I. No. XV. p. 141, n. (39.); and No. XVI. p. 178, *et seq.* in notes.

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Purchase Money secured on the Estate.

of these presents, is lawfully, rightly, and absolutely seised, in his demesne, as of fee, in his own right, and to his own use, of and in all and singular the messuages or tenements, lands, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee simple in possession, and in severalty, without there being any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, except, &c. (1). AND also, that {for and notwithstanding any such act, deed, matter, or thing as aforesaid}, he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, to the uses, and for the ends, intents, and purposes, and in the manner hereinbefore declared or expressed, concerning the same. AND further, that all and singular the same hereditaments and premises, with their appurtenances, shall from henceforth and from time to time, and at all times hereafter, re-

And hath right to convey.

Premises shall remain to uses aforesaid.

(1) If there be any incumbrance, except it here.

PURCHASES.

main, continue, and be, to the uses, and for the intents and purposes hereinbefore expressed concerning the same, and the rents, issues, profits, and proceeds thereof, be had, received, taken, and enjoyed accordingly (1), without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter having, or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for him, them, or any of them (2). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate,

Purchase Money secured on the Estate.

Free from incumbrances.

(1) If the mortgage be made by a separate deed, add,

Mortgage by separate deed.

"Subject only to the said indenture of even date herewith, and the several trusts and provisions therein contained for payment of the principal and interest monies intended to be thereby secured."

(2) See *ante*, p. 393, n. (3).

PURCHASES.

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right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or knowingly suffered by or with the privity or procurement of the said (*vendor*) or his heirs, or any person or persons, now or hereafter lawfully claiming, or possessing any estate, right, title, or interest, either at law or in equity, in, to, or concerning the same hereditaments and premises, or any part thereof, from, through, under, or in trust for him, them, or any of them (1). AND moreover, that he the said (*vendor*) and his heirs (2), and all and every persons or person, now or at any time hereafter so claiming, or entitled as last aforesaid (other than persons claiming, or entitled, under

Covenant for further assurance.

Mortgage by separate deed.

(1) If the mortgage be made by a separate instrument, add, "The said indenture hereinbefore referred to as bearing or intended to bear even date herewith, &c. only excepted."

(2) See *ante*, p. 393, n. (3).

PURCHASES.

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or by virtue (1) of such leases, or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same), shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said *(purchaser)*, his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due and proper despatch], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, declaration, or limitation, of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better, more perfectly, fully, absolutely, or satisfactorily granting, releasing, conveying, confirming and assuring the several messuages, lands, tenements, hereditaments, and premises, hereinbefore granted, released, and confirmed, or mentioned or intended so to be, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their respective

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(1) If the mortgage be by separate deed, add,

Mortgage by separate deed.

"Of the said indenture of even date herewith or under, &c." *as above.*

PURCHASES.

Purchase Money secured on the Estate.

rights, privileges, members, appendances, and appurtenances, unto the said (*trustee*) and his heirs, to the uses and for the ends, intents, and purposes hereinbefore declared or expressed, of or concerning the same, in such manner and form, (subject only and without prejudice to the payment of the said sum of £ and interest) (1), as he the said (*purchaser*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister), shall reasonably advise and require, and prepare and tender (if the nature thereof permit) for his or their signature and execution, [so that such further assurance or assurances, or any of them, do not contain or imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators; and his, her, and their own respective acts, deeds, omissions, or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered or secured to him, her, or them,

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Mortgage by separate deed.

(1) If the mortgage be made by separate deed, say,

"Subject only to the said indenture of even date herewith, and the several trusts and provisions thereof for securing the principal and interest money aforesaid."

Purchase Money secured on the Estate.

Covenant by the purchaser for payment of the money.

for or in respect of his, her, or their time, trouble, and expense. AND the said *(purchaser)* for himself, his heirs, executors, and administators, doth hereby covenant, promise, declare, and agree with and to the said (*vendor*) and (*trustee*), and each of them and their respective executors, administrators, and assigns, in the manner following (that is to say) that he the said (*purchaser*), his heirs, executors, and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid unto the said (*vendor*), his executors, administrators, or assigns, the said principal sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland, called England, with interest for the same after the rate of £5 of like lawful money for every £100 by the year, at and upon the days and times, and in the manner hereinbefore appointed for payment of the same respectively, and according to the true intent and meaning of these presents. [And also shall and will in the mean time, and until full payment and satisfaction thereof, well and truly pay, discharge, and satisfy all and all manner of taxes, rates, duties, and assessments whatsoever, which now are, or at any time or times hereafter shall or may be imposed or charged upon, or payable in respect of the hereditaments and premises hereby granted and released, or otherwise assured, or mentioned and intended so to be, or any part thereof, or the said sum of £ or the interest thereof, (other than as aforesaid),

And taxes in the mean time.

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Purchase Money secured on the Estate.

by authority of parliament, or otherwise howsoever, and shall and will effectually protect, save harmless and keep indemnified the said (*vendor*) his heirs, executors, administrators, and assigns, of, from, and against the same, and all penalties, forfeitures, losses, damages, and expenses, which shall or may be incurred or arise by reason of the non-payment thereof. AND ALSO that (1) he the said (*purchaser*) at the time of the sealing and delivery of these presents, (subject only to the estate hereinbefore limited in use to the said (*vendor*) for the term of five hundred years as aforesaid, and the trusts thereof for securing the payment of the said sum of £ and interest as aforesaid), is lawfully, rightfully, and absolutely seised in his demesne as of fee in his own right and to his own use, of all and singular the messuages, lands, and hereditaments hereinbefore granted and released, or otherwise assured or intended so to be, as of, in, or for a good, perfect, clear, absolute, and inde-

Covenant by purchaser for title, &c.

Mortgage by separate deed.

(1) If the money to remain upon mortgage be secured by separate instrument, say,

"He the said (*purchaser*) shall and will immediately upon the execution of these presents, sign, seal, and deliver the said hereinbefore in part recited indentures of lease and release by way of mortgage to the said (*vendor*), for securing the said sum of £ , as and for the remainder of the said purchase money or sum of £ so agreed to remain upon the security of the premises as aforesaid, and also that if default, &c." *as above.*

PURCHASES.

feasible estate of inheritance in fee simple, without there being any trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever. AND also, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendances, and appurtenances, shall from time to time, and at all times hereafter, during, and in the mean time subject to, the said term of five hundred years, hereinbefore limited or created as aforesaid, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes, hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner of hindrance, interruption, claim, or demand whatsoever, from or by him the said (*purchaser*) his heirs or assigns, or any other person or persons whomsoever (1). AND further, that if default shall happen to be made in payment of the

Purchase Money secured on the Estate.

Quiet enjoyment by vendor after default.

(1) As to the covenants on the part of the purchaser being unqualified, see *ante*, p. 381, n. (2), and *post*, Vol. V. *first Mortgage Deed.*

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Purchase Money secured on the Estate.

said sum of £ and the interest thereof, or of any part of the same respectively, unto the said (*vendor*) his executors, administrators, or assigns, at or upon the days or times, or in manner hereinbefore limited and appointed for payment thereof, contrary to the true intent and meaning of the proviso and agreement hereinbefore contained in that behalf, then and in such case it shall be lawful for him the said (*vendor*) his executors, administrators, and assigns, from time to time, and at all times hereafter, during the continuance of the said term of five hundred years, hereby granted or demised, peaceably and quietly to enter into and upon, and have, hold, use, occupy, possess, and enjoy, the messuages, lands, tenements, hereditaments, and premises, hereby granted and released, or otherwise assured as aforesaid, with their and every of their appurtenances, and have, receive, and take the rents, issues, and profits thereof, to and for his and their own use and benefit, for and during all the residue and remainder which shall be then to come and unexpired of the same term, without any molestation, interruption, disturbance, claim, or demand whatsoever, of or by him the said (*purchaser*) or his heirs, or any other person or persons whomsoever. AND that free and clear, and freely and clearly exonerated and discharged, or otherwise, by him the said (*vendor*) his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other

Free from incumbrances.

PURCHASES.

Purchase Money secured on the Estate.

[feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time or times hereafter shall or may be made, created, executed, committed, occasioned, or suffered by any person or persons whomsoever (1). AND moreover, that he the said (*purchaser*) his heirs, executors, administrators, and assigns, and all and every person and persons whomsoever now or hereafter having, or lawfully, equitably, or rightfully claiming, or possessing, any estate, right, title, trust, or interest, in, to, or out of, or upon, the messuages, lands, tenements, hereditaments, and premises comprised in these presents, or any part thereof, (other than such lessees as aforesaid,

Covenant by purchaser for further assurance after default.

(1) If the premises consist wholly or chiefly of houses or buildings, here may be added a covenant by the purchaser to repair and insure, see *post*, rider B. p. 408.

Insurance.

PURCHASES.

Purchase Money secured on the Estate.

in respect of their estates and interests under or by virtue of their respective leases), shall and will from time to time, and at all times, after default shall happen to be made in payment of the said sum of £ , or of the interest thereof, or of any part thereof respectively, contrary to the true intent and meaning of the proviso and agreement hereinbefore contained for that purpose, at the request of the said (*vendor*) his heirs, executors, administrators, or assigns, but at the expense of the said (*purchaser*) his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances whatsoever, [whether by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, declaration or limitation of or to any use or uses, or other assurance or assurances, of record or not of record, [not only] for the further, better, more perfectly, and absolutely or satisfactorily granting, demising, confirming, or otherwise assuring all and singular the same messuages, lands, tenements, hereditaments, and premises, with their appurtenances, unto the said (*vendor*) his executors, administrators, and assigns, for and during the rest and residue which shall be then to come and unexpired of the said term of five hundred years, [but also for granting, conveying, and as-

Purchase Money secured on the Estate.

suring the fee-simple, reversion, and inheritance of the same hereditaments and premises, unto and to the use of him the said (*vendor*) and his heirs, (free from all right and equity of redemption whatsoever), as he the said (*vendor*) his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall reasonably advise and require (1). PROVIDED ALWAYS NEVERTHELESS, and it is hereby further declared and agreed, by and between the said (*purchaser*) and (*vendor*), and it is the true intent and meaning of them and of these presents, and the said (*vendor*) doth hereby consent and agree, (notwithstanding the demise hereinbefore contained,) that until default shall be made in payment of the said principal sum of £ or some part thereof, or of the interest thereof, upon the days, at the times, or in the manner hereinbefore appointed for payment of the same respectively, it shall be lawful for the said (*purchaser*) his heirs and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy all and singular the messuages, lands, tenements, hereditaments, and premises, by these presents granted and released, or otherwise assured or intended so to be, and to receive and take the rents, issues, and profits thereof, to and for his and their own proper use and benefit, without any molestation, hindrance, interruption, or disturbance whatsoever, of, from, or by the said (*vendor*), his executors, administrators, or assigns,

Proviso that purchaser shall enjoy until default in payment.

(1) See *post*, Vol. V. notes to Mortgage by Demise.

Fee simple, &c.

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Purchase Money secured on the Estate.

or any other person or persons whomsoever, rightfully claiming or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any or either of them (1)]. (2) IN WITNESS, &c.

Production of deeds.

(1) If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, as *ante*, No. XXXI. p. 39, or otherwise as directed, Vol. I. No. XVI. p. 183. in notes, and p. 196. and see *post*, rider (A).

Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI. p. 188, *et seq.*

(2) Here may be added a power for the purchaser to grant leases and to fell timber, if so agreed, see *post*, rider (C), p. 411, and (D), p. 413.

Stamp.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86, and *post*, Vol. V.

By the late stamp acts, it is declared that deeds or instruments operating as a *mortgage*, and also as a *conveyance* of the equity of redemption, or reversion of the same property, to or in trust for the purchaser, shall be stamped as well with the *ad valorem* duty on mortgages, as that on conveyances upon sales.

And where property is conveyed subject to any mortgage or other debt, or to a sum to be afterwards paid by the purchaser, such debt or other sum shall be taken to be a part of the consideration in respect of such *ad valorem* duty.

Execution, &c.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (62); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88, *et seq.*

Purchase Money secured on the Estate.

Covenant for production of title deeds.

(A) For the mutual security of the vendor and purchaser in a transaction of this kind, the title deeds may be deposited with a third person, as a trustee for both parties, with a deed

"BETWEEN (*vendor*) first part, (*purchaser*) second part, and (*trustee*) third part. In which, after reciting the purchase deed, and proviso for redemption, that it has been agreed that the title deeds relating to the estate, and mentioned in the schedule annexed, should be deposited with the trustee, in trust for the purposes after mentioned, and that the same have been so deposited accordingly. WITNESS, that it is declared and agreed that trustee shall stand possessed thereof, in trust for vendor and purchaser, and their heirs, &c. according to their several estates, &c. under the purchase deed.

"Proviso that when remainder of purchase money and interest shall be paid, the deeds shall be delivered to purchaser whole and undefaced, casualties excepted.

"Covenant by trustee that until deeds be delivered up to purchaser, he will at purchaser's expense produce them (on receiving seven days notice) to him or vendor, and furnish attested copies if required.

"Proviso, that if purchase money not paid within three calendar months after time appointed by purchase deed for payment, vendor may borrow, or otherwise raise any sum upon the premises, not exceeding the sum then due, or by transferring his mortgage security, and trustee shall in such case deliver deeds up to vendor, his executors, &c. without any authority from purchaser."

(B) *A Covenant by the Purchaser to repair and insure.* See ante, p. 403.

Covenant by purchaser to keep the premises in repair,

"AND the said (*purchaser*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *(vendor)*, his executors, administrators, and assigns, that he the said (*purchaser*), his heirs or assigns, shall and will at all times, and from time to time during the continuance of the said mortgage security, well and sufficiently repair and keep in good and substantial repair and condition, all and every the messuages, or tenements and buildings, now or hereafter standing or being upon the lands and hereditaments hereby granted and released, or any part thereof: AND ALSO shall and will immediately upon and after the execution of these presents, [*or (as the case may be)* within one calendar month next immediately before the expiration of the policy of insurance hereinbefore assigned, in case the said sum of £ or any part thereof shall be then remaining due and unpaid] at his and their own proper costs and charges, insure, or cause to be insured, in the insurance office, or some other public insurance office in London or Westminster, for insuring houses and buildings from fire, to be named or approved of by the said (*vendor*), his heirs, executors, administrators, or assigns, all and every the said messuages or tenements and buildings, from loss or damage by fire, in the said sum of £ for the [further] term of years, in the joint names of the said (*purchaser*) and (*vendor*), their respective heirs, executors, administrators, or assigns, and keep the same so insured from time to time, during so long as the said sum of £ or any part thereof, or the interest thereof, or of any part thereof, shall remain due, and shall and will deposit every such policy of insurance with the said (*vendor*), his exe-

and insured against fire.

Purchase Money secured on the Estate.

cutors, administrators, and assigns, and shall and will, at his and their own proper costs and charges, if and when he or they shall be thereunto required by the said (*vendor*) his executors, administrators, or assigns, [assign and make over the said policy unto the said (*purchaser*), his executors, administrators, and assigns, IN TRUST for the said (*vendor*), his executors, administrators, and assigns, for better securing to him and them the payment of the said sum of £ and interest, and subject thereto in trust for the said (*purchaser*), his heirs and assigns, and also shall and will], produce and show unto him or them, the receipts or vouchers for the premiums or other sum or sums of money paid for such insurance or insurances. And in case the said (*purchaser*), his heirs or assigns, shall neglect or omit to make or keep on foot such insurance or insurances, or to keep the premises so in repair, or refuse to assign the policy or policies thereof, or to produce such receipts or vouchers, as aforesaid, then it shall be lawful for the said (*vendor*), his executors, administrators, or assigns, so to insure or cause to be insured or repaired the said premises, or any part of them, and that the said (*purchaser*), his executors or administrators, shall and will from time to time on demand, well and truly pay, or cause to be paid to the said (*vendor*), his executors, &c. all such sum and sums of money as he or they shall advance or pay for or in respect of any such insurance, with interest for the same after the rate of £5 per cent. per annum, to be computed from the time or respective times of paying the same; and also all such sums of money, costs, charges, and expenses, as he the said (*vendor*), his executors, administrators or assigns, shall pay, expend, sustain, or be put unto in recovering the sum so to be insured, or any part thereof, with interest for the same after the rate of £5 per cent. per annum, and in default thereof, he the said (*vendor*), his executors, administrators, or assigns, shall and may by and out of the rents and profits of the said premises, or otherwise, retain and reimburse himself and themselves the said expenses; and until repayment or full satisfaction thereof, the sum or sums to be by him or them paid, for or in respect of such insurance or insurances, to-

In default vendor may insure.

PURCHASES.

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gether with interest for the same after the rate aforesaid, shall be chargeable upon the messuages, lands and hereditaments, comprised in these presents, as or by way of a further charge thereupon, [and the said premises shall not be redeemed or redeemable until, as well the said sum so paid or expended, together with interest after the rate aforesaid, as the said principal sum of £ and interest, shall be fully paid and satisfied]. AND it is hereby further declared and agreed, that in case the said messuages or tenements and buildings or any part thereof, shall be burnt down, destroyed, or damaged by fire, then and in such case all and every such sum or sums of money as shall or may be recovered or received upon or by virtue of such policy or policies, as aforesaid, shall, if required by the said (*vendor*), his executors, administrators or assigns, be laid out and expended in the rebuilding or repairing the same, [or such parts thereof as shall be so burnt down, destroyed, or damaged], or at his or their pleasure and discretion (in case the same shall not be laid out by the said office of insurance in such rebuilding or repairs), shall or may be taken and received by him or them, and paid and applied (or so much thereof as shall be sufficient), or as far as the same will extend in payment, satisfaction, and discharge of the sum then due to him or them upon the security of the said premises. [AND the said (*purchaser*) doth hereby make, constitute, and appoint the said (*vendor*), his executors, administrators, and assigns, his true and lawful attorney and attornies, for all and singular the purposes aforesaid, with full power to appoint others in his or their stead; and doth hereby expressly declare that the receipt and receipts of the said (*vendor*), his executors, administrators, or assigns, or of his or their attorney or attornies, shall from time to time and at all times be good, sufficient, and effectual discharges for any sum or sums which shall be paid or payable for or by virtue of any such insurance as aforesaid, or which he, they, or any or either of them, shall or may receive of or from any insurance office or offices by virtue of these presents, and fully and absolutely discharge and indemnify the person or persons paying the same from seeing to the application thereof."

Money received to be expended in rebuilding.

Letter of attorney.

PURCHASES.

(C) *Power for Purchaser to grant Leases.* See ante, p. 406, n. (2).

Purchase Money secured on the Estate.

Power to grant leases.

PROVIDED also, and it is hereby declared and agreed, by and between the said parties to these presents; and the said *(vendor)* for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said *(purchaser)* his heirs and assigns, that notwithstanding failure may be made in the payment of the said sum of £ and interest, or any part of the same respectively, on or at the day or time appointed or mentioned in the proviso hereinbefore contained for payment thereof, it shall be lawful for the said *(purchaser)* his heirs and assigns, at any time thereafter, and from time to time until the said *(vendor)* his executors, administrators, or assigns, shall by ejectment or other action or proceeding at law or in equity, recover or seek to recover the possession of the said hereditaments and premises or some part thereof, or by bill or other suit or proceeding in equity, foreclose or seek to foreclose the equity of redemption of the same, by indenture or indentures under the hand and seal of the said *(purchaser)* his heirs or assigns to demise, lease, or grant, or limit or appoint by way of demise, lease or grant, all or any of the said lands, hereditaments, and premises, which have usually been letten to rent, unto any fit and proper person or persons who shall be willing to take the same for any term or number of years not exceeding twenty-one years (1), so as the lease or leases which shall be so granted, be made to take effect in possession or within three calendar months from the date thereof, and not in reversion or otherwise by way of future interest, and so that in all and every the said leases, there be reserved and made payable half yearly or oftener during the continuance of the

(1) If it be desirable that this power should be extended to the granting of building leases, see the form of such a power, INDEX *voce* POWER.

Building lease.

PURCHASES.

Purchase Money secured on the Estate.

said term thereby to be granted, the best and most approved yearly rent or rents to be incident to the immediate reversion of the said premises, which can be had or reasonably obtained for the same without taking any sum or sums of money, or other thing exceeding the sum of 10*s.* by way of fine, premium, or foregift, and so as the lessees in the said leases named enter into all proper and usual covenants to repair and leave in repair the messuages, erections, and buildings, [and manure, till, and manage the arable and pasture land so to be demised, according to the usual course of husbandry there], and that the tenants or lessees do not assign or underlet the said premises, or any part thereof, without the licence and consent in writing of the said *(purchaser)* his heirs, executors, administrators, or assigns, and all other covenants, stipulations, and agreements which are usual in leases of a like nature. And so as in every of the said leases there be contained conditions of re-entry for non-payment of the rent, and for non-performance of the covenants and agreements therein reserved and contained, and an express exception of all timber trees or trees likely to become timber, and also a clause or clauses whereby the lessee or tenant of the demised premises shall be restrained from committing waste.

Mortgagee will confirm said leases.

And the said *(vendor)* for himself, his heirs, executors, administrators, and assigns, doth further covenant, declare, and agree, that he and they shall and will from time to time upon the reasonable request, and at the costs and charges of the said *(purchaser)* his heirs and assigns, become party to, and seal and deliver and otherwise allow, ratify, and confirm all and every the lease and leases to be granted in conformity to the true intent and meaning of, and the terms and restrictions of the last mentioned clause or agreement. Provided nevertheless that the effect or operation of any such allowance, ratification, or confirmation of such lease or leases, shall not be to defeat or prejudice the right of him the said *(vendor)* his executors, administrators, or assigns, to enter upon and recover, and retain possession of the said mortgaged premises by virtue of the grant and release hereinbefore contained, subject only to the said lease or leases so to be granted.

Purchase Money secured on the Estate.

(D) *Provisoes authorizing or forbidding the Purchaser to fell Timber.* See ante, p. 406, n. (2).

Power for purchaser to fell timber.

"AND that he the said *(purchaser)* his heirs and assigns, shall and may during the continuance of the said mortgage, (unless and until notice in writing under the hand of the said (*vendor*) his executors, administrators, or assigns, shall be given to him or them to the contrary), fell, cut down, and carry away all such timber and underwood of full and proper growth which for the time being shall be upon the said lands and premises, at seasonable and ordinary times; in like manner as a tenant for life, without impeachment of waste, may by the rules of law or of equity fell and carry away the same."

Or if the timber upon the estate be a principal security for mortgage debt, the purchaser may be expressly restrained from exercising such privilege.

Covenant that purchaser will not fell timber.

"AND further, the said (*purchaser*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with the said (*vendor*) his executors, administrators, and assigns, that so long as the said principal sum of £ so now suffered by the said *(vendor)* to remain on security of the said messuages, lands, hereditaments, and premises as aforesaid, or any part thereof, (exceeding the sum of £), shall remain due and owing thereupon, he the said (*purchaser*) his heirs or assigns, shall not nor will cut down, fell, sell, or dispose of any wood, timber, or other trees off or from the lands, hereditaments, and premises hereby granted and released as aforesaid, or mentioned or intended so to be, or any part thereof, (other than such wood, timber, or other trees only as shall or may from time to time be employed or made use of, for, in, or

PURCHASES.

Purchase Money secured on the Estate.

about the necessary repairs of the said messuage, hereditaments, and premises, or some part thereof), without the consent and approbation of the said (*vendor*) his heirs, executors, administrators, or assigns, first had and obtained in writing under his or their hand, or respective hands."

PURCHASES.

Purchase Money advanced by a Third Person.

No. LII.

Conveyance from a Vendor to a Purchaser *and a* Mortgagee *who advances part of the Purchase Money.*

Variations *where part of the Premises are* Copyhold. *Also where the Mortgage is effected by a separate Deed* (1).

THIS INDENTURE of three parts, made the day of in the year of the reign, &c. and in the year of our Lord BETWEEN (2) (*the vendor*) of, &c. of the first part, and (*the purchaser*) of, &c. of the second part, and (*the mortgagee*) of, &c. of the third part. WHEREAS, &c. AND WHEREAS the said (*purchaser*) hath contracted with (3) the said

Parties.

Recitals.

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(1) As to the difference between the mortgage being taken by the same or a different conveyance, see *ante*, No. LI. p. 381, n. (2); 389, n. (1). Separate mortgage.

(2) If the wife of the vendor have a title to dower out of the lands to be conveyed, make her a party, and vary the draft agreeably to No. XXXI. Wife.

(3) If the estate were sold by public auction, make the recital of the contract and of the payment of the purchase money, conformably to No. XXXI. p. 4. n. (1). Auction.

If part of the premises are copyhold, see Vol. I. No. XX. Copyhold.

If the mortgage be made by a conveyance to a trustee, see *ante*, p. 381, n. (2). Trustee.

PURCHASES.

Purchase Money advanced by a Third Person.

(*vendor*) for the absolute purchase of the fee simple and inheritance of all and singular the said lands and hereditaments at the sum of £ AND WHEREAS the said (*purchaser*) has requested the said (*mortgagee*) to lend him the sum of £ to enable him to complete the said purchase, which he has consented to do on having such conveyance and assurance made to him of the said lands and hereditaments, and such bond or obligation entered into by the said (*purchaser*) for repayment of the said sum and interest as hereinafter is expressed. NOW THEREFORE THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, in hand well and truly paid to the said (*vendor*) at or immediately before the sealing and delivery of these presents, by the said (*mortgagee*) at the instance and request of the said (*purchaser*) testified by his being a party to, and signing and sealing these presents, in part of the said purchase money or sum of £ and of the further sum of £ of like lawful and current money to the said (*vendor*) at the same time in hand well and truly paid by the said (*purchaser*) the receipt of which said sums of £ and £ making together the sum of £ and being in full for the absolute purchase of the fee simple and inheritance of the lands and hereditaments hereinafter described, free from incumbrances,

WITNESS, that in consideration of the purchase money.

PURCHASES.

Purchase Money advanced by a Third Person.

(except as hereinafter is mentioned), the said (*vendor*) doth hereby acknowledge, and of and from the same doth acquit, release, discharge, and exonerate the said (*mortgagee*) and (*purchaser*) and each of them, and their respective heirs, executors, and administrators, and also the said lands and hereditaments, by these presents, HE the said (*vendor*) with the privity and consent of the said (*mortgagee*) testified in manner as aforesaid, HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm (1) unto the said (*purchaser*) (2) and his heirs, ALL, &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are comprised in a certain indenture of bargain and sale for a year, hereinafter referred to, as bearing date the day next before the day of the date hereof: TOGETHER with all [houses (3), out-

The vendor grants and confirms.

Parcels.

General appurtenances.

(1) Here describe the subject of the conveyance by its present and ancient name, situation, tenantcy, &c. Parcels.

If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. Moiety, &c.

(2) If the conveyance is to be made to a trustee, see *ante*, p. 385.

And if it be of a remainder or reversion expectant upon the determination of any prior estate, see Vol. I. No. XXIV Remainder, &c.

(3) See general words, applicable to different kinds of real property, and INDEX *voce* RECITALS. General words.

PURCHASES.

Purchase Money advanced by a Third Person.

houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever, to the said hereditaments and premises, or any of them, any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, except, &c. (ALL (1). which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (2) to him thereof made by the said (*vendor*) for five shillings consideration, by indenture bearing date on the day next before and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and

Reference to the bargain and sale for a year.

Moiety, &c. (1) If the conveyance be of a moiety or other portion of the estate, see Vol. I. No. XXVI.

Remainder, &c. If of a remainder or reversion, see *ib.* No. XXIV.

Bargain and sale. (2) See the form of this bargain and sale, *ante*, Vol. I. No. XIII. XIV.

reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any of them. [TOGETHER with all deeds (1), muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are (2), or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity, and true and attested copies (duly stamped) when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences, (not being of record) which now, or hereafter shall or may be so in his, their, or any or either of their possession, custody, or power as aforesaid, in any wise relating to the same here-

PURCHASES.

Purchase Money advanced by a Third Person.

Grant of title deeds.

And copies.

(1) If none of the title deeds are in the possession or at the disposal of the vendor, this grant of them should be omitted. Title deeds.

(2) If the conveyance be of a remainder or reversion, see Vol. I. No. XXIV. Remainder, &c.

PURCHASES.

Purchase Money advanced by a Third Person.

To HOLD to the purchaser and his heirs, but to the use of the mortgagee for 500 years.

ditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered by and at the expense of the said (*vendor*), his heirs or assigns, but all future copies to be delivered and taken at the expense of the person or persons requiring the same]. To HAVE AND TO HOLD the said (1) messuages, lands, tenements, hereditaments, and premises (2), hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendances and appurtenances, " unto the said (*purchaser*) his heirs and assigns, but nevertheless to the uses, and for the ends, intents, and purposes hereinafter expressed concerning the same, that is to say, TO THE USE of the said *(mortgagee)* his executors, administrators, and assigns, for the term of five hundred years, to be computed from the day next before the day of the date of these presents, and to be thence next ensuing, without impeachment, of or

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Moiety, &c. (1) If the conveyance be of a moiety or other portion of the estate, see Vol. I. No. XXVI.

Remainder, &c. If of a remainder or reversion, see *ib.* No. XXIV.

Mortgage in fee. (2) If the mortgage be taken in fee, *sed vid. ante,* No. LI. p. 389, n. (1), instead of the lines within inverted commas, say,

" Unto and to the use and behoof of the said (*mortgagee*) his heirs and assigns for ever, but subject nevertheless to the proviso or agreement for redemption of the said premises next hereinafter contained."

for any manner of waste, (subject nevertheless to redemption as hereinafter is mentioned)," and from and after the determination of the said term of five hundred years, and also in the mean time subject only thereto, and to the right of the said *(mortgagee)*, his executors, administrators, and asssigns, therein, " TO THE USE and behoof of the said *(purchaser)* his heirs and assigns for ever (1)." PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said *(purchaser)* and *(mortgagee)* and it is the true intent and meaning of them and of these presents, and the said *(mortgagee)* for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree, with and to the said *(purchaser)* his heirs and assigns, that for and notwithstanding any matter or thing hereinbefore contained or implied to the contrary thereof, if the said (*purchaser*) his heirs, executors,

PURCHASES.

Purchase Money advanced by a Third Person.

Proviso for redemption on re-payment of the money borrowed.

(1) If the vendor's wife be a party add here a covenant to levy a fine; for the form of which see *ante*, No. XXXI. p. 11. Wife.

If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here.—See the form of this covenant, Vol. I. p. 236. Copyhold.

If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say, Uses to bar dower.

" Unto the said *(purchaser)* and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say."

Add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

PURCHASES.

Purchase Money advanced by a Third Person.

or administrators, or any person or persons on his or their behalf, do and shall well and truly pay, or cause to be paid unto the said *(mortgagee)* his executors, administrators, or assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, between the hours of ten and twelve of the clock in the day time, the full and clear sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, with interest for the same, after the rate of £5 for every £100 by the year of like lawful money, upon the days, and in the manner next hereinafter mentioned (that is to say) the sum of £ being one half year's interest of or for the said sum of £ after the rate aforesaid, on the day of next ensuing the date of these presents, and the sum of £ being the said principal sum of £ and one other half year's interest of or for the same, after the rate aforesaid, on the day of then next following, and which will be in the year without any deduction or abatement whatsoever, for or by reason of any taxes, charges, assessments, cause, matter, or thing whatsoever, whether now or hereafter to be imposed upon, or payable in respect of the messuages, lands, tenements, and hereditaments mentioned or intended to be hereby granted and released, or otherwise assured, or any part thereof, or the said principal sum of £ or the interest thereof, or upon the said *(mortgagee)* his heirs, executors, administrators, or assigns, or any other person or

Purchase Money advanced by a Third Person.

persons, for or in respect of the same, by act of parliament, or otherwise howsoever, and also do and shall in the mean time, and until full payment and satisfaction of the said principal sum and interest, pay and satisfy, or cause to be paid and satisfied, all and all manner of annual and other rents, duties, taxes, rates, assessments, and charges whatsoever, which from time to time shall or may be payable for or in respect of the said premises, or any part thereof, then the said *(mortgagee)* his executors, administrators, and assigns, shall and will, from and immediately, or at any time after such last mentioned payment, shall be so made as aforesaid (1), upon the request, and at the costs and expense of the said *(purchaser)* his heirs, executors, administrators, or assigns, assign, surrender, and effectually assure all and singular the messuages, lands, tenements, hereditaments, and premises hereby limited to the use of the said *(mortgagee)* his executors, administrators, and assigns for the said term of five hundred years, or

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Term to cease.

(1) If there be already a term of years in the land which can be used for any purpose of protection, should there be occasion, the term may be made to cease on repayment of the money, in which case say

"Then and in that case the said term of 500 years shall cease and be void to all intents and purposes whatsoever."

But if not, it may be proper to keep the term on foot by declaring that on such repayment the term shall be assigned to attend the inheritance, as otherwise on payment of the money on the day mentioned in the proviso, the term will become extinguished.

PURCHASES.

Purchase Money advanced by a Third Person.

mentioned or intended so to be, as aforesaid, with their and every of their appurtenances, for all his, and their estate, right, title, and interest therein and thereto under or by virtue of these presents, unto the said *(purchaser)* his heirs, executors, administrators, or assigns, or unto such other person or persons, or for such estate and estates, interest and interests, and to, for, and upon such lawful trusts, intents, and purposes as the said *(purchaser)* his heirs, executors, administrators, or assigns, shall direct or appoint, and that free and clear of and from all intermediate and other charges and incumbrances whatsoever, made, executed, or knowingly suffered by the said *(mortgagee)* his executors, administrators, or assigns, or any other person or persons lawfully or equitably claiming from, under, or in trust for him, them, or any of them, so that for the making any such conveyance or assurance, he the said *(mortgagee)* his executors, administrators, or assigns, be not required to go from his or her then place or respective places of abode. AND the said (*vendor*) for himself, his heirs, executors, and administrators, and for every of them, doth hereby covenant, declare, grant, and agree, with and to the said (*purchaser*) his heirs and assigns, and also to and with the said (*mortgagee*) his executors, administrators, and assigns, in the manner following (1), (that is to say) that for and

Covenant by vendor that he is seised in fee.

Wife.

(1) If the wife of the vendor be a party, make these covenants accord with that circumstance, as *ante*, p. 20.

notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, suffered, or omitted by him the said (*vendor*) or any of his ancestors (1) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully, rightly, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of, and in all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or otherwise assured, or so mentioned or intended to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, and in severalty, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases, of which counterparts have been pro-

PURCHASES.

Purchase Money advanced by a Third Person.

If the conveyance be of a moiety or other portion of the estate, see covenants Vol. I. No. XXVI. Moiety, &c.

If of a remainder or reversion, see *ibid.* No. XXIV. Remainder, &c.

If a part of the land be copyhold, make such additions to this and the subsequent covenants as will be found *ibid.* No. XX. p. 269. Copyhold.

(1) If the vendor took otherwise than by descent, see *ante*, p. 393.

PURCHASES.

duced unto the said *(purchaser)* his counsel or solicitor, at or before the sealing and delivery of these presents, and the land and sewers tax chargeable upon the said premises only excepted.

Purchase Money advanced by a Third Person.

And hath right to convey.

AND also that for and notwithstanding any such act, deed, matter, or thing as aforesaid) he the said (*vendor*) now hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto the said (*purchaser*) and his heirs, to and for the uses, ends, intents and purposes, and in the manner and form hereinbefore expressed concerning the same.

That the purchaser shall quietly enjoy.

AND further, that immediately upon the sealing and delivery of these presents, and at all times and from time to time thereafter, all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendages, and appurtenances, shall and lawfully and rightfully may be had, holden, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received and taken, according to the true intent and meaning of these presents, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter having or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said heredita-

ments and premises, or any part thereof, from, through, under, or in trust for him, them, or any of them (1), (other than through, under, or by virtue of, and so far as respects any such leases, or agreements for leases as aforesaid, and these presents.) AND that free and clear, and freely, clearly, and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or suffered by or

PURCHASES.

Purchase Money advanced by a Third Person.

Free from incumbrances.

(1) See *ante*, p. 393.

PURCHASES.

Purchase Money advanced by a Third Person.

Covenant for further assurance.

with the procurement or privity of the said *(vendor)* or his heirs, or any person or persons now or hereafter rightfully claiming, or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of them, (such leases and agreements as aforesaid, and these presents only excepted). AND moreover, that he the said (*vendor*) and his heirs, and all and every other persons or person, now or at any time hereafter, lawfully or rightfully claiming, or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted and released, or otherwise assured, or mentioned or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, (other than persons claiming or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, or of the said (*mortgagee*) his executors, administrators, or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all convenient and proper despatch, all and every such further and

other lawful and reasonable acts, deeds, conveyances, matters and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, more perfectly, fully, and absolutely, or satisfactorily granting, releasing, conveying, confirming, and assuring the said messuages, lands, tenements, hereditaments, and premises, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their respective rights, privileges, members, appendages, and appurtenances unto the said (*purchaser*) his heirs and assigns, to and for the uses, ends, intents, and purposes hereinbefore declared or expressed concerning the same, and according to the true intent and meaning of these presents, in such manner and form as he the said (*purchaser*) his heirs or assigns, or the said (*mortgagee*) his executors, administrators, or assigns, or his or their counsel in the law, (being of the degree of a barrister), shall advise and require, and prepare and tender (if the nature thereof permit) for his or their signature and execution; [so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be

PURCHASES.

Purchase Money advanced by a Third Person.

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Purchase Money advanced by a Third Person.

required to make or execute the same, and his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them for or in respect of his, her, or their time, trouble, and expences. AND the said (*purchaser*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said (*mortgagee*) his executors, administrators, and assigns, in the manner following (that is to say) that he the said (*purchaser*) his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid unto the said (*mortgagee*) his executors, administrators, or assigns, the said principal sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, with interest for the same, after the rate of £5 of like lawful money for every £100 by the year, at and upon the days and times, and in the manner, hereinbefore appointed, or mentioned for payment of the same respectively. AND, &c. (*add absolute covenants by the purchaser as mortgagor with the mortgagee for seizin and right*

Covenant by the purchaser for payment of the money.

to convey) (1). AND also, that if default shall happen to be made in payment of £ and interest, or any part of the same, at the time or in the manner mentioned in the proviso or agreement for redemption hereinbefore contained, then and thenceforth, and from time to time, and at all times thereafter, during the continuance of the said term of 500 years, it shall be lawful for the said (*mortgagee*) his executors, administrators, and assigns, to enter into, and upon, and have, hold, use, occupy, possess, and enjoy, all and singular the said hereditaments and premises hereby granted and released, or otherwise assured, or mentioned or intended so to be, and every part and parcel of the same, with their appurtenances, and to receive and take the rents and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful eviction, expulsion, interruption, hindrance, refusal, or molestation whatsoever, of, from, or by the said (*purchaser*) or his heirs, or any other person or persons whomsoever, [for or by reason of any right or equity of redemption, or other cause or thing whatsoever]. AND also free and clear, and freely, clearly and absolutely acquitted, exonerated, released, and discharged, or otherwise by him the said (*purchaser*) his heirs, executors, or administrators, at his or their own costs and

PURCHASES.

Purchase Money advanced by a Third Person.

In default thereof mortgagee to enter and enjoy the premises.

Free from incumbrances.

(1) See *ante*, p. 400.

PURCHASES.

Purchase Money advanced by a Third Person.

charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified, of, from, and against all and all manner of former and other [gifts, grants, feoffments, demises, mortgages, leases, bargains and sales, jointures, dowers, right and title of or to dower, and thirds at common law or otherwise, uses, trusts, wills, entails, annuities, legacies, rent-charges, rents seck, and all and all manner of other rents, and also of, from, and against all and all manner of fines, amerciaments, statutes, recognizances, judgments, executions, extents, suits, decrees, debts of record, debts due to the king or any of his predecessors, sequestrations], estates, titles, charges, liens, and incumbrances whatsoever, (except only as hereinbefore is excepted).

Covennnt for further assurance after default.

AND moreover, that upon and after any such default shall be so made as aforesaid, he the said (*purchaser*) and his heirs, and all persons whomsoever, then or thereafter lawfully or equitably, and rightfully claiming or possessing any estate, right, title, trust, charge, or interest at law or in equity, of, in, to, out of or upon the said messuage or tenement, lands, and hereditaments, hereby granted and released, or otherwise assured, or mentioned or intended so to be, or any part thereof, (other than and except the person or persons whose estate or interest, or estates or interests, is or are hereinbefore excepted, and so far as respects the same), shall and will from time to time and at all times hereafter upon every

PURCHASES.

Purchase Money advanced by a Third Person.

reasonable request of the said (*mortgagee*), his executors, administrators, or assigns, but at the costs and charges in all things of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause or procure to be made, done, acknowledged, levied, suffered, executed, and perfected], all such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, [whether by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or not enrolled, release, confirmation, or other assurances whatsoever], for the further, better, more perfectly, and absolutely, or satisfactorily granting, demising, confirming, or otherwise assuring all and singular, or any part of the same messuage or tenement, lands and hereditaments, with the appurtenances, to the use of him the said (*mortgagee*) his executors, administrators, and assigns, for the residue which shall be then to come and unexpired of the said term of 500 years [so hereinbefore demised, limited, or conveyed to him and them, as aforesaid], according to the true intent and meaning of these presents, as by the said (*mortgagee*) his executors, administrators, or assigns, or his or their counsel in the law shall be reasonably required or advised, PROVIDED ALWAYS nevertheless, AND it is hereby declared and agreed by and between the said (*mortgagee*) and (*purchaser*), and the said (*mortgagee*) doth hereby consent and agree (notwithstanding

Agreement that the purchaser shall enjoy until default in payment.

PURCHASES.

Purchase Money advanced by a Third Person.

the demise so hereinbefore made to him as aforesaid), that in the mean time and until default shall be made in payment of the said sum of £ and interest, agreeably to the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said (*purchaser*) his heirs and assigns, to have, hold, occupy, and enjoy, all and singular the messuage or tenement, lands and hereditaments, hereby granted and released, or otherwise assured, or mentioned or intended so to be, and every part and parcel of the same, and receive, take, and retain the rents, issues, and profits thereof, to and for his and their own proper use and benefit, without any hindrance, molestation, or interruption whatsoever, of, from, or by the said (*mortgagee*) his executors, administrators, or assigns, or any person or persons now or hereafter lawfully and rightfully claiming, or entitled to claim any estate or interest, in, to, or concerning the same premises, by, from, under, or in trust for him, them, or any or either of them (1). IN WITNESS, &c.

Copyhold.

(1) If part of the premises be copyhold, the following covenant may be added for the security of the mortgagee.

"AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said sum of £ so advanced by the said (*mortgagee*) to the said (*vendor*) at the request of the said (*purchaser*) as aforesaid, and for better securing to the said (*mortgagee*) the repayment thereof with interest, at the time and in the manner hereinbefore mentioned, he the said (*purchaser*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree,

Purchase Money advanced by a Third Person.

to and with the said (*mortgagee*) his heirs, executors, administrators, and assigns, that immediately upon or as soon as conveniently can or may be after the copyhold or customary hereditaments, hereinbefore covenanted to be surrendered to the use of him the said (*purchaser*) his heirs or assigns, shall be so surrendered, he and they shall and will at his and their own proper costs and charges, procure himself and themselves to be admitted thereto, and duly and effectually surrender the same, with the appurtenances, into the hands of the lord or lady of the manor, of which the same are holden, according to the custom thereof, to the use of the said (*mortgagee*) his heirs and assigns, to be holden by copy of court roll at the will of the lord, according to the custom of the said manor, subject nevertheless to a proviso or agreement for making void the said surrender, on payment by the said (*purchaser*) his heirs, executors, or administrators, to the said (*mortgagee*) his executors, administrators, or assigns, of the said sum of £ and interest, after the rate, at the time, and in the manner hereinbefore mentioned or appointed for payment of the same."

IN WITNESS, &c.

No. LIII.

A Conveyance of Plantations *in the* West Indies *by Owner in Fee, to a Purchaser by Bargain and Sale.*

Variations *where it is by Lease and Release.*
Where the Vendor *was Tenant in Tail.*
Where the Wife is interested.

Parties.

THIS INDENTURE of two parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor*) of, &c. (1), of the one part, and (*the purchaser*) of, &c. of the other part.

Recital of contract for the purchase.

WHEREAS the said (*purchaser*) has contracted with (2) the said (*vendor*) for the absolute

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Wife.

(1) If the wife of the vendor have a title to dower out of the land to be conveyed, make her a party, and vary the form as *ante*, No. XXXI.

Auction.

(2) If the estate was sold by public auction, make the recital of the contract, and of the payment of the purchase money, conformable to No. XXXI. p. 4.

PURCHASES.

Plantations.

purchase (1) of the messuages or tenements, lands, and hereditaments hereinafter described, with the negroes, slaves, cattle, stock, implements, utensils, and appurtenances upon or belonging to the same, at or for the price or sum of £ and the same are now intended to be conveyed to him in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, and in consideration of the sum of £ . of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the absolute purchase of the messuages or tenements, plantations, lands, and hereditaments, and other the property hereinafter described, the said (*vendor*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, and administrators, and also the property and hereditaments, as well by these presents as by the receipt

WITNESS, the vendor in consideration of the purchase money.

If the consideration be a transfer of money in the funds, see No. XXXI. p. 5. Consideration, transfer of stock.

If the estate be sold by direction of the court of Chancery, see *ibid.* Sale before a master.

(1) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. Moiety.

PURCHASES. Plantations. Grants, &c. or acknowledgment for the same sum hereupon indorsed.] He the said (*vendor*) HATH granted, bargained, and sold, and assigned and transferred, and by these presents DOTH grant, bargain, and sell, and assign, transfer, and confirm unto the said (*purchaser*) his heirs, executors, administrators, and assigns respectively, according to the nature of the property hereinafter described; Parcels. ALL (1) that the plantation or parcel of land called the , situated, lying, and being in the parish of , in the island of in the West Indies, containing by estimation acres, be the same more or General words. less, bounded &c. &c. together with all and singular the messuages or dwelling-houses, edifices, boiling-houses, sugar-houses, still-houses, curing-houses, windmills, cattle-stalls, structures, fabrics, buildings, cisterns, coppers, furnaces, worms, worm-tubs, stills, still-heads, coolers, and other utensils, implements and chattels, in, upon, or belonging to the said plantation, and premises, or to issue or proceed from, or in respect of the same or any part thereof: AND also all those several negroes or slaves, horses, mules, and cattle and stock which are particularly described or mentioned in the schedule hereunder written or hereunto annexed, and all other negroes and slaves, horses, mules, cattle and stock, which are

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Moiety, &c. (1) If the conveyance be of a moiety, or other portion of the estate, see Vol. I. No. XXVI.

Remainder, &c. If of a remainder or reversion, see *ib.* No. XXIV.

PURCHASES.

Plantations.

now resident upon or belonging to the said plantation, lands and hereditaments, and all and every the progeny, issue, and increase of the females of the same; and all ways, paths, and other passages, wells, aqueducts, waters, water-courses, trees, woods, underwoods, and the ground and soil thereof, liberties, privileges, profits, commodities, emoluments, advantages, and appurtenances whatsoever to the said messuages or tenements, plantations, lands, hereditaments, sugar-works, and premises, or any of them, or any part or parcel thereof, belonging or in any wise appertaining, or with the same or any of them, holden, used, occupied, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known as part or parcel thereof, or of any part thereof, or appendant or appurtenant thereto (1), and all remainders and reversions of and in the said lands, hereditaments, plantations, and premises, and the rents, issues, and profits to arise or become payable for or in respect thereof; and all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever both at law and in equity of him the said (*vendor*) in, to, out of, upon, or respecting the said here-

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(1) The student will perceive that there is in this conveyance no reference to a bargain and sale for a year; the reason of which is that such an assurance is not necessary in the conveyance of estates in the West Indies, which pass by way of grant; see Vol. I. No. XIII. p. 111. note. I have however usually referred to it in the conveyances which have come before me of West India estates; and see Horsm. 768. 3 Wms. Prec. 1053.

Bargain and sale.

PURCHASES. *Plantations.* Grants of title deeds. And copies. To hold the freeholds to the purchaser and his heirs.

ditaments, property, and premises, and every part thereof. Together with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are (1) or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, of any person or persons from whom he or they can or may procure the same without action, or suit at law or in equity; and true and attested copies, (duly stamped), of the several deeds, muniments, and writings, comprised or mentioned in the schedule hereunder written, or hereunto annexed; and of all other deeds, muniments, and writings, (not being of record) which now are or hereafter may be so in his or their power or custody as aforesaid, in anywise relating to the same premises, or any of them, jointly with other hereditaments or property of equal or greater value; such copies when first required to be made and delivered at the expense of the said *(vendor)* his heirs, executors, and administrators, but all future copies to be made and taken at the expence of the person or persons requiring the same. TO HAVE AND TO HOLD the said (2) messuages or tenements, plantations, lands, and

Remainder, &c. (1) If the conveyance be of a remainder or reversion, see Vol. I. No. XXIV.

Moiety, &c. (2) If the conveyance be of a moiety or other portion of the estate, see *ibid.* No. XXVI.

Remainder, &c. If of a remainder or reversion, see *ib.* No. XXIV.

PURCHASES.

Plantations.

hereditaments, slaves, negroes (1), and all and singular such of the premises hereby granted, bargained, and sold or otherwise assured or mentioned or intended so to be, as is or are freehold, or of the nature of an estate of inheritance or of freehold, unto and to the use of the said *(purchaser)* his heirs and assigns, AND TO HAVE AND TO HOLD the said horses, mules, cattle, stock, utensils, implements, and such parts of the said premises hereby bargained, sold, and assigned or otherwise assured, as are of a personal estate, or of the nature of chattel interests, unto the said (*purchaser*), his executors, administrators, and assigns, absolutely for his and their own use and benefit (2). AND the said *(vendor)* for himself, his heirs, executors, and administrators, doth hereby covenant, declare, grant, and agree, with and to the said *(purchaser)* his heirs, executors, administrators and assigns, according to the respective natures and qualities of the estates and interests hereinbefore bargained, sold, assigned, and assured, in the manner following (3), (that is

And chattels to him, his executors, &c.

Covenant by vendor that he is seised in fee.

(1) Although negroes are of a nature which from analogy to property in this country might seem to be of a chattel or personal nature, they are by the laws of Jamaica deemed freehold; in some of the West India settlements, however, they are reckoned of a personal, and in others of a mixed nature.

(2) If the wife of the vendor be a party, add here a covenant to levy a fine, for the form of which see *ante*, No. XXXI. p. 14. Wife.

(3) If the wife of the vendor be a party, make these covenants accord with that circumstance, as in *ante*, No. XXXI. p. 20. Wife

PURCHASES. to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, or executed, or knowingly occasioned, suffered, or omitted, by him the said (*vendor*) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully, rightfully and absolutely seised of or otherwise well entitled to in his own right, and to his own use, all and singular the messuages, lands, tenements, hereditaments, plantations, and premises hereinbefore granted, bargained, and sold, or mentioned or intended so to be, as of, in and for a good, perfect, clear, absolute and indefeasible estate of inheritance or of freehold respectively in possession and in severalty, and also possessed or otherwise well entitled to the personal and chattel estates and interests hereinbefore assigned, or mentioned or intended so to be, as of or for his own proper goods, chattels, and property, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, in-

Plantations.

Moiety. If the conveyance be of a moiety or other portion of the estate, see covenants in Vol. I. No. XXVI.

Remainder. If of a remainder or reversion, see *ibid.* No. XXIV.

Plantations.

cumber, or prejudicially affect the same, and also that for and notwithstanding any such act, deed, matter or thing as aforesaid, he the said (*vendor*) hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, assign, and confirm, all and singular the same hereditaments, property, and premises respectively, and the possession, reversion, freehold, and inheritance thereof, unto and to and for the use and behoof of the said (*purchaser*) his heirs, executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*) his heirs, executors, administrators, and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, enter in and upon (1), and at all times thereafter have, hold, take, possess and enjoy, all and singular the same hereditaments, property, and premises, with their and every of their respective rights, members, privileges, appendages, and appurtenances, and receive and retain the rents, issues, profits, progeny, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, of or by the said (*vendor*) his heirs, executors, or administrators, or any person or persons, now or

And hath right to convey.

That the purchaser shall quietly enjoy.

(1) If the conveyance be of a remainder or reversion, see Vol. I. No. XXIV.

Remainder.

PURCHASES. *Plantations.*

hereafter having or rightfully claiming from, through, under, or in trust for him, them, or any of them, any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon or concerning the same hereditaments, property, and premises, or any part thereof, (other than as hereinbefore is particularly expressed). AND that clear and free, and clearly and absolutely discharged and exonerated or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all former and other gifts, grants, bargains and sales, releases, assignments, [settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions, in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time heretofore have been, or at any time hereafter shall or may be made, created, executed, committed, occasioned or knowingly suffered by the said (*vendor*), or by or with his or their procurement or privity, or acts, means, or defaults, or by any person or persons, now or

Free from incumbrances.

PURCHASES.

Plantations.

hereafter rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of them. AND moreover that he the said (*vendor*) his heirs, executors, and administrators, (according to the nature of the said estates and property), and all and every other person or persons, now or at any time hereafter rightfully claiming, &c. &c. (*covenant for further assurance in the usual form*) (1). AND THIS INDENTURE FURTHER WITNESSETH, that to the intent that these presents may be duly registered (2), inrolled, and recorded in the proper office or offices appointed for that purpose, in the said island of and take effect according to the laws thereof respecting assurances of estates and interests therein, he the said (*purchaser*) HATH made, nominated, constituted, and appointed, and by these presents doth make, nominate, constitute and appoint, and in his place and stead put A. B. and C. D. both of the island of aforesaid, jointly and severally to be his true and

Further assurance.

FURTHER WITNESS, power of attorney to register the deed.

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(1) See *ante*, p. 164.

If the title deeds be not delivered to the purchaser, add a covenant for their production, as in No. XXXI. p. 39. or prepare a separate deed for that purpose, agreeably to the form referred to, INDEX, *voc.* TITLE DEEDS.

Title deeds.

(2) In most of the American settlements and West India islands, conveyances are required to be registered there; which may be done either personally, or by attorney.

Where the deed is sent over to be registered, then a counterpart should be executed and remain here, or the deed should first be put upon record in one of the courts at Westminster, lest it should be lost in its transmission.

PURCHASES. *Plantations.*

lawful attorneys, and attorney, jointly and severally for him the said (*purchaser*) in his name, and at his costs and expense to appear before the registrar of deeds of the said island for the time being, or his lawful deputy, or other person or persons competent for that purpose, and acknowledge the present indenture (1) as and for the act and deed of the said (*purchaser*) and his name and seal hereunto subscribed and affixed to be the proper hand-writing and seal of him the said (*purchaser*); and further for him the said (*purchaser*) in his name and at his costs and expense to do, perform, and perfect all other acts, deeds, matters, and things whatsoever, which they the said A. B. and C. D. or either of them shall deem requisite or expedient in order to the registering, enrolling and recording these presents (2) in the register, or other proper office or offices in the said island of , or otherwise rendering the same valid and effectual, according to the laws and customs of the said island for the time being. IN WITNESS, &c.

(Schedule, &c.)

Wife party.

*** If the wife of the grantor have any interest in the premises, and be resident in Great Britain, she must be made a party, and (by acts of assembly) her consent to the conveyance be acknowledged before one of the Judges of the Court of Common Pleas; the form of which may be,

(1) If the conveyance be by lease and release, add,

"And the bargain and sale for a year accompanying the same."

(2) If the conveyance be by lease and release, add as above.

PURCHASES.

Plantations.

"Be it remembered that on the day of the within named A., the wife of the within named B., one of the grantors in the within written indenture named, personally appeared before me, the Right Honourable Vicary Gibbs, Lord Chief Justice of His Majesty's Court of Common Pleas, at Westminster, and did there acknowledge before me, that the within-written indenture was her spontaneous act and deed, and was by her executed in order and to the intent that the same indenture, together with this present acknowldgement thereupon had, should be effectual to pass the estate and interest, and right and title of her the said A. B. of, in, and to the plantation, land, slaves, hereditaments and property, by the same indenture expressed to be conveyed or assured; she the said A. B. having been first solely and separately examined, and voluntarily consenting thereto, which I do hereby attest under my hand, in my capacity of Chief Justice aforesaid, the day and year hereinbefore mentioned."

Enrolment.

It will also be requisite, in order to give validity to the wife's assurance, that the deed be enrolled at length in the Court of Chancery, and that a certificate of such enrolment, under the hand of the proper officer, be indorsed on the deed.

Vendor tenant in tail.

If the vendor be tenant in tail of the estate, a similar acknowledgment must be taken; as,

"Be it remembered that B, &c. appeared, &c. &c. (*as above*) and did acknowledge before me, that the same indenture was his act and deed, and was by him duly executed; and did also acknowledge and declare, that the said acknowledgment was by him made in order to dock, bar, and destroy, all estates tail and all remainders and reversions expectant thereupon now subsisting in the plantation, land, slaves, hereditaments, and property, or any part thereof, expressed to be conveyed or assured in or by the same indenture, which I do hereby attest, &c." *as above.*

No. LIV.

Conveyance by Mortgagee in Fee, *under Power of Sale* (1) *contained in the* Mortgage Deed.

Variations *where the Conveyance to the Purchaser is to Uses to bar* Dower.
Other Variations as in Margin below (2).

THIS INDENTURE made the day of in the &c. and in the year of

Mortgagee may sell.

(1) It was long doubted whether a mortgagee could sell and make a title to the premises mortgaged to him by virtue of a power given to him for that purpose, without the concurrence of the mortgagor; see 3 Elem. Conv. 2d ed. 306, 309; but it is now settled that he may, Clay *v.* Sharpe, 18 Ves. 343, n. Corder *v.* Morgan, *ib.* 344.

Trustee.

(2) If the mortgage conveyance was to a trustee for the mortgagor, make him a party of the first part.

Mortgagor joining.

If the mortgagor joins in the conveyance it will assume the form of a conveyance from a mortgagor and mortgagee, as *ante*, No. XXXVI.

Uses to bar dower.

If the conveyance is taken to the purchaser to uses to bar dower, make a trustee party for that purpose of the second part.

"Being a trustee named and appointed by and on behalf of the said *(purchaser)* for the purposes hereinafter mentioned, of the part."

Moiety.

If the mortgage was of a moiety or other undivided part only, see Vol. I. No. XXVI.

Reversion.

If of a reversion or remainder, see *ib.* No. XXIV.

Equity of redemption.

If of an equity of redemption, see *ib.* No. XXV.

Copyholds.

If the premises are copyhold, see Vol. I. No. XVIII.

If part copyhold, see *ib.* Nos. XX. XXI.

PURCHASES.

Mortgagee under Power of Sale.

our Lord . BETWEEN (*the mortgagee*) of, &c. (a mortgagee in fee of the lands and hereditaments hereinafter described) of the one part, and *(the purchaser)* of, &c. of the other part. WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , which was in the year of our Lord , the release being made or expressed to be made between (*the mortgagor*) of, &c. of the one part, and the said (*mortgagee*) of the other part, the said *(mortgagor)* in consideration of the sum of £ to him then advanced by the said (*mortgagee*) granted, released, and conveyed the several messuages, lands and hereditaments, hereinafter described, unto and to the use of the said (*mortgagee*) his heirs and assigns, SUBJECT nevertheless to a proviso or agreement therein contained, that if the said *(mortgagor)* his heirs, executors, or administrators, or any other person or persons on his or their behalf, should pay or cause to be paid unto the said (*mortgagee*) his executors, administrators, and assigns, the said sum of £ with interest for the same, after the rate therein mentioned, upon the day of the said (*mortgagee*) his heirs, or assigns, should convey the same lands and hereditaments, with their appurtenances, unto and to the use of the said (*mortgagor*) and his heirs, or unto such other person or persons, and in such manner and form as he or they should direct,

Recital of mortgage.

PURCHASES.

Mortgagee under Power of Sale.

And of power of sale.

freed and absolutely discharged from all demands whatsoever for or in respect of the said mortgage, and all incumbrances committed or occasioned by him the said (*mortgagee*) his heirs or assigns. AND it was further provided, declared, and agreed by and between the said (*mortgagor*) and (*mortgagee*) in and by the said in part recited indenture, that if default should be made in payment of the said sum of £ or of the interest thereof, or any part of the same at the time therein appointed for payment thereof, then and in such case it should be lawful for the said (*mortgagee*) his heirs or assigns, and he and they were thereby expressly authorised and empowered, either immediately after such default, or at any time thereafter, without the concurrence of or any further authority than therein was contained, from the said (*mortgagor*) his heirs or assigns for that purpose, to sell and dispose of all and singular the messuages or tenements, lands, hereditaments, and premises expressed to be thereby granted and released, or any of them, or any part of the same, with their and every of their appurtenants, either together or in separate parcels, at one time or at separate times, and either by public auction or by private contract, at his or their discretion, and at or for such sum or sums of money as he or they should think fit, and at any such sale or sales to buy in the same or any part thereof, and to resell the same or any part thereof, without being answerable for any loss thereby to

be sustained, and to convey and assure all and singular the premises which should be so sold, to and to the use of, or in trust for the person or persons purchasing the same, or his or their heirs, executors, administrators, appointees, or assigns, or otherwise as he or they should lawfully direct or require, freed and absolutely discharged of and from all equity and right of redemption whatsoever, of or by him the said (*mortgagor*) his heirs or assigns, or any person or persons lawfully or rightfully claiming or to claim from or under him, them, or any or either of them. AND it was thereby declared, that the receipt or receipts of the said (*mortgagee*) or of his executors, administrators, or assigns, should be a sufficient and effectual discharge to the purchaser or purchasers of the same premises, or any part thereof, for his and their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, should not after payment thereof, and taking such receipt, be liable to see to the application thereof, nor be answerable or accountable for any loss, misapplication, or nonapplication of such purchase-money, or any part thereof, or be obligated to inquire into the necessity, expediency, reason, or occasion, of or for any such sale or sales, or otherwise howsoever in relation thereto, in any manner howsoever. AND WHEREAS the said sum of £ was not paid at the time in the said indenture of release mentioned for payment thereof, and the same still remains due and owing upon the security of

PURCHASES.

Mortgagee under Power of Sale.

Default made and arrears of interest.

PURCHASES.

Mortgagee under Power of Sale.

Sale by auction.

the said premises, together with the further sum of £ for years interest thereupon. AND WHEREAS the said (*mortgagee*) in pursuance of the power or authority so given to or vested in him for sale and disposition of the said hereditaments as aforesaid, put up the same to sale by public auction at on or about the day of at which sale the said (*purchaser*) became and was declared to be the highest bidder for the same at the sum of £ and paid into the hands of the auctioneer the sum of £ by way of deposit, and in part of the said purchase-money, and has requested that the same may be conveyed to him and his heirs in the manner hereinafter expressed.

WITNESS, that in consideration of purchase money.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*mortgagee*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, in full for the absolute purchase of the fee simple and inheritance of and in the lands and hereditaments hereinafter described, and upon and for the trusts and purposes of the said in part recited indenture of release of the day of the receipt whereof, and that the same is so in full as aforesaid, the said (*mortgagee*) doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge, the said (*purchaser*) his heirs,

executors, administrators, and assigns, and also the said messuages, lands, and hereditaments, by these presents, HE the said (*mortgagee*) in pursuance and exercise of the power or authority in or by the said in part recited indenture of the day contained, and thereby given to him as aforesaid, HATH bargained, sold, aliened, and released (1), and by these presents DOTH bargain, sell, alien, release, and confirm, unto the said (*purchaser*) and his heirs, ALL, &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to; TOGETHER with all [houses, outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of other rights, privileges, easements, advantages, append-

PURCHASES.

Mortgagee under Power of Sale.

The mortgagee in pursuance of power bargains, sells, &c.

Parcels.

With the appurtenances.

(1) The power of sale usually given in mortgage deeds being a common law authority, and not taking effect under the statute of uses, does not require to be exercised by appointment.

Appointment.

PURCHASES.

Mortgagee under Power of Sale.

ances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, [or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed]. ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said *(purchaser)* by virtue of a bargain and sale to him thereof made by the said (*mortgagee*) (for five shillings consideration), by indenture bearing date on the day next before the day of the date of these presents, for the term of one year commencing from the day next preceding the day of the date of the same indenture (and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*mortgagee*), in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof, under or by virtue of the said in part recited indenture of lease and release, or otherwise howsoever: [TOGETHER with all deeds, muniments, writings, and evidences of title whatsoever, in any wise relating to the same hereditaments and premises,

Reference to lease for a year.

or any part thereof (1), which now are, or hereafter shall or may be in the possession or lawful power of the said (*mortgagee*), or his heirs, executors, or administrators, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity. PURCHASES. *Mortgagee under Power of Sale.*

To HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore, and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, and appurtenances unto the said (*purchaser*) and his heirs, "to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever," (2) freed and absolutely discharged and for ever exonerated of and from the said principal sum of £ and all interest of or for the same, or any part thereof, and all claims and demands whatsoever, for or in relation

To HOLD to the purchaser in fee.

Discharged from the said mortgage debt.

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(1) If the smaller part only of the mortgaged premises are sold, and the title deeds in the mortgagee's possession not to be delivered to the purchaser, make this part of the deed relative to deeds and copies conformably to No. XXXVI. p. 132, n. (1). Part sold.

(2) If the conveyance is intended to be taken to uses to bar wife's title to dower, omit the words within inverted commas, and say, Uses to bar dower.

"Unto the said (*purchaser*) and his heirs, to and for the uses, ends, and purposes hereinbefore expressed concerning the same, that is to say,"

Add the limitation referred, *ante*, No. XXXI. p. 10, n. (3).

PURCHASES.

Mortgagee under Power of Sale.

thereto, in any manner howsoever. AND the said, &c. (1). AND the said (*mortgagee*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*purchaser*) his heirs and assigns, in the manner following, that is to say, that for and notwithstanding, &c. (*covenants by the mortgagee for the title, quiet enjoyment, and further assurance, as in the case of a vendor in ordinary cases*) (2). IN WITNESS, &c. (3).

Trustee.

(1) If the mortgage conveyance was to a trustee, add here covenant by such trustee that he has not incumbered.

Covenant for title.

(2) In conveyances by mortgagees where the mortgagor joins, the only covenant, the student has perceived, which the mortgagee enters into, is that he has not incumbered; but in the present case where he is not only owner at law of the estate by breach of the condition for redemption by the mortgagor, but also in equity by reason of the power of sale, and is also entitled to a considerable part (perhaps the whole) of the purchase money, without which it is not to be supposed the power of sale would have been given, it is reasonable that he should enter into the usual covenants for the title, &c. as in the case of sales by other beneficial owners of estates, or of their produce on sale.

Outstanding term.

(3) If there be an outstanding term, which is to be assigned, or surrendered, see *ante*, No. XXXI. p. 34.

Rent charge.

If the premises are subject to a rent-charge, or the like, see Vol. I. p. 212. 427.

Production of deeds.

If any of the title deeds are retained by the vendor or his predecessors in title, add a covenant for their production, or otherwise as directed, Vol. I. No. XVI. p. 183, 196, and *ante*, p. 39.

Provisoes, &c.

For various covenants, provisoes, clauses, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see variations, Vol. I. No. XVI, p. 188, *et seq.*

PURCHASES.

Mortgagee under Power of Sale.

*** As to the stamp to be impressed, see Vol. I. INTRODUCTION, p. xcvi. also 4 Elem. Conv. 2d edit. p. 86.

Stamp.

As to the execution, attestation, receipt for consideration money, &c. &c. see Vol. I. No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also INTRODUCTION, Vol. I. p. xliv. and lxxxiv. *et seq.* also 4 Elem. Conv. 2d edit. p. 88. *et seq.*

Execution, &c.

Direction to solicitor.

N. B. Although the mortgagee under a power of sale can sell without any concurrence on the part of the mortgagor, yet it will be proper that the mortgagee's solicitor should give some previous notice of his intention to sell, and the time and place of sale, (which should be by public auction) in case the principal and interest due upon the mortgage shall not be sooner paid off; and on the completion of the sale the mortgagee should state and send to the mortgagor an account of the produce, expenses, &c. &c. and the surplus balance in hand, and name a time when he will pay it over to him, or as he may direct, at which time he should tender such balance, and if rejected, or if there be no attendance for the receipt of it, invest it in the 3 per cent. consol. Bank annuities, in the name of the mortgagor, giving him notice of this having been done.

PURCHASES.

Vendor under Land Tax Act.

No. LV.

Conveyance of Freehold Hereditaments to a Purchaser under the Land Tax Redemption Acts.

Parties.

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord BETWEEN (*the vendor*) of, &c. of the first part, (*the commissioners*) of, &c. two of the commissioners specially appointed by his majesty's royal sign manual, or other competent authority, to carry into execution the several acts of parliament made and now in force for the redemption and purchase of the land-tax in the county of, &c. of the second part, and (*the purchaser*) of, &c. of the third part. WHEREAS, &c. (*recital of will devising the estate to the vendor, &c.*).

Recital of 42 Geo. III.

AND WHEREAS, by an act of parliament made and passed in the forty-second year of his late majesty, King George the Third, intituled "an act for consolidating the provisions of the several acts passed for the redemption and sale of the land-tax into one act, and for making further provisions for the redemption and sale thereof, and for removing doubts respecting the right of persons claiming to vote at elections for knights

PURCHASES.

Vendor under Land Tax Act.

of the shire and other members to serve in parliament," it was enacted among other things, that it should be lawful for all persons therein described whereon any land-tax thereby made saleable should be charged, except as therein excepted, to contract and agree with the commissioners specially to be appointed for the purposes of the said act, in the county wherein such hereditaments were situated, for the redemption of the said land-tax charged thereon or any part thereof, upon the terms and conditions, and subject to the regulations therein mentioned. AND that for the purpose of redeeming or purchasing the land-tax charged on any hereditaments, it should be lawful for all and every person and persons being in the actual possession, or entitled beneficially to the rents and profits thereof, but not having the absolute property thereof, other than and except as therein excepted, to sell either by public auction or private contract such part or parts of such hereditaments as should be eligible and necessary for the redeeming or purchasing such land-tax; and by deed indented and inrolled, or registered as therein mentioned, absolutely to convey the same, whether charged with land-tax or not, and if so charged, then freed and discharged from the said land-tax unto any person or persons whomsoever. AND it was also provided, that no sale, conveyance, or grant, which should be made by virtue and in pursuance of the said act, other than and except as therein excepted, should be valid and effectual unless two at least of the commis-

PURCHASES.

Vendor under Land Tax Act.

sioners, to be specially appointed for the purposes of the said act in the county where the said hereditaments to be sold should be situate, should certify their consent thereto and approbation thereof by signing and sealing the same as parties thereto. AND it was also provided, that no other or greater quantity of estate should be sold than what should appear to the commissioners eligible and necessary to be sold for the purpose of redeeming the said land-tax, and of paying the costs and charges incurred thereby. AND it was also provided, that no hereditaments should be sold aforesaid by any tenant for life thereof, if the person beneficially entitled to the next beneficial estate of remainder therein should, within one calendar month after notice in writing should be given to him by the party desirous of making such sale, agree to redeem the land-tax, for the redemption of which such sale was postponed. AND also that all and every sum and sums of money, to arise by virtue of any sale to be made in pursuance of the said act, should be paid by the respective purchasers into the Bank of England, to be there placed to the account of the commissioners for the reduction of the national debt, to be by them invested in the purchase of three per cent. Bank annuities, according to the directions of the said act, whether the contract for the redemption of the said land-tax, or the deed of sale thereof, should be completed or not, and the receipt of the cashiers of the Bank, or any one of them, should be a full and sufficient discharge to the several purchasers paying in such

PURCHASES.

Vendor under Land Tax Act.

monies as aforesaid, and the parties whose land-tax should be so redeemed should, upon the production of the certificate of the contract for redemption, be entitled to have such certificate thereof, and their estates should be discharged from such tax, in the same manner as if the quantity of three per cent. annuities to be purchased with such monies had been actually transferred by them to the said commissioners. AND it was also further provided, and the said act did further declare, that the person or persons making such sale as aforesaid might, with the consent of the commissioners under whose authority the same should be made, agree with the purchaser that the consideration for the purchase should be in the three per cent. consolidated, or in the three per cent. reduced annuities, to be transferred by such purchaser to the commissioners for the redemption of the national debt, in lieu of money to be paid into the Bank as thereinbefore directed, and the receipt of any of the cashiers acknowledging such transfer should be as effectual a discharge to the purchaser of the said land-tax as if the consideration had been money, and paid into the Bank in the manner aforesaid, and the party whose tax should have been redeemed therewith should be entitled to the same certificate, and their estates exonerated from such land-tax in the same manner as if such annuities had been actually transferred by them. AND it was also further provided and declared by the said act, that the executors of any deed of sale by the commissioners under the said

PURCHASES.

Vendor under Land Tax Act.

act should be sufficient evidence that the monies and other acts thereby required to be given or done were duly given, done, and performed. AND WHEREAS the said (*vendor*) being desirous of redeeming the land-tax paid for and out of certain messuages, farms, lands, and other hereditaments, of which he the said (*vendor*) is tenant for life (or *as the case may be*) under or by virtue of the said in part recited will of the said late deceased, with remainder as aforesaid, situated, lying, and being in the parish of in the said county of amounting together to the yearly sum of £ as by the schedule hereunder written or hereupon indorsed, marked A. reference being thereunto had will more fully appear, hath contracted and agreed with the said (*commissioners*) for the redemption of the land-tax charged upon the said lands and hereditaments last mentioned, according to the assessment and rate made in pursuance of the said in part recited act, in consideration of so much and such quantity of three per cent. consolidated Bank annuities as will redeem the annual sum of £ being the land-tax charged upon or payable in respect of the said lands and hereditaments last hereinbefore mentioned, the three per cent consols to be transferred at the time in the proportions and manner hereinafter, and in the certificate hereunder written, or hereupon indorsed, marked B. mentioned. AND WHEREAS for the purpose of enabling the said (*vendor*) to complete the said contract with the said commissioners for the purchase of the said

Recital of vendor's estate.

Contract for redemption of land-tax.

Contract for sale of the premises.

land-tax charged on the said estates, the said purchaser has agreed with the said (*vendor*) for the purchase of the inheritance in fee-simple of the said messuage, &c. of which he the said (*vendor*) is tenant for life, in possession, and beneficially entitled to the rents and profits, at or for such price, sum, or quantity of three per cent. consolidated Bank annuities as according to the market price thereof at of the clock in the day-time of the day of the date of these presents will redeem or purchase the annual sum of £ being the annual sum charged upon the said lands and hereditaments of the said (*vendor*) in as aforesaid, as or for the land-tax thereof. AND WHEREAS the said (*vendor*) with the consent of the said commissioners under the said in part recited act, testified as by the said act is required, hath agreed with the said (*purchaser*) that the said annuities shall be transferred by him to the commissioners for redemption of the national debt. AND WHEREAS all notices, and all other acts required by the said in part recited act to be given or done by the said (*vendor*) as tenant for life as aforesaid, have been duly given, done, and performed, as is testified by the said (*commissioners*) of the said act being parties to and executing these presents. NOW THIS INDENTURE WITNESSETH, that for and in consideration of £ consolidated Bank annuities, being the quantity of stock which according to the agreement and assessment aforesaid respectively is required and sufficient for the purchase or redemption of the said annual sum of

PURCHASES.

Vendor under Land Tax Act.

Notices, &c. given.

WITNESS, in consideration of Bank annuities transferred to account of commissioners.

PURCHASES.

Vendor under Land Tax Act.

£ land-tax as aforesaid, so transferred by and with the consent and approbation of the said (*commissioners*) as aforesaid, testified by their signing and sealing these presents as parties thereto, and by the direction and appointment of the said (*vendor*), testified in like manner in the books of the governor and company of the Bank of England, in the names of and to be there placed to the account of the commissioners for the reduction of the national debt, under the title of an account of the sale of the land-tax, as by a receipt or certificate under the hand of one of the cashiers of the Bank of England, bearing date the day of last, relation being thereunto had, may appear.

And nominal consideration paid to vendor.

AND in consideration of ten shillings of lawful money of Great Britain, by the said (*purchaser*) to the said (*vendor*) party hereto, in hand well and truly paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,

Vendor in pursuance, &c.

HE the said (*vendor*) by virtue and in pursuance of the power and authority, powers and authorities vested in him by the said hereinbefore in part recited act of parliament of the forty-second year of the reign of his late Majesty, or any prior or other act or acts of parliament now in force relating to the sale or disposition of the land-tax, and all and every other powers and authorities in him vested or in anywise

Grants, &c.

enabling him in that behalf, HATH granted, bargained, sold, and disposed of, and by this indenture, duly sealed and delivered, and intended

to be inrolled in one of his Majesty's courts at Westminster, as by the said in part recited or other act or acts aforesaid, is required for conveyance of estates sold for redemption of the land-tax, DOTH by and with such consent, authority, and approbation of the said (*commissioners*) and so testified as aforesaid, (they the said (*commissioners*) having had estimate in writing upon oath of the value of the said advowson, tithes, and hereditaments, and that the sale thereof will not materially injure the residue of the estate remaining unsold, certified by their signing and sealing, and being parties to these presents,) grant, bargain, sell, dispose of, and confirm unto the said (*purchaser*), his heirs and assigns, ALL that, &c. &c. and all the estate, &c. &c. (*as in ordinary cases*(1)). TO HAVE AND TO HOLD the said advowson, hereditaments, and all and singular other the premises hereinbefore described or mentioned, and hereby granted, bargained, sold, and confirmed, or expressed or intended so to be, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*), his heirs or assigns, to the only proper use of him the said (*purchaser*) his heirs or assigns for ever. AND the said (*vendor*), party hereto, DOTH hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*purchaser*) his heirs and assigns,

PURCHASES.

Vendor under Land Tax Act.

Parcels.

To hold.

Covenants for title.

(1) See *ante*, p. 417.

PURCHASES.

Vendor under Land Tax Act.

in manner following, that is to say, that, &c. [*Add usual covenants for the title, according to the estate the vendor has in the premises.*]

Schedules above referred to.

Stamp.

*** By sec. 68, the conveyances under this act are exempted from stamp duty, unless the consideration money exceed £1000.

Inrolment.

This conveyance must, by the provisions of the recited act of 42 Geo. III. sec. 119, be inrolled in one of his Majesty's courts at Westminster within six calendar months from the date, unless the premises are situated in Middlesex or the county of York, in which case it must be registered within the same period.

No. LVI.

Conveyance by the Lords Commissioners of his Majesty's Navy, *or other Government Commissioners, to a Purchaser.*

THIS INDENTURE of four parts, made the day of ; in the year, &c. and in the year of our Lord . BETWEEN (*the commissioners*) of, &c. (being Lords Commissioners of his Majesty's Navy duly appointed in that behalf) of the first part, (*the treasurer of the navy*) (treasurer of the said navy) of the second part, and (*the purchaser*) of, &c. of the third part (1). WHEREAS, &c. [*Recital of conveyance to the commissioners for the use of government*]. AND WHEREAS the said (*commissioners*) having no longer occasion for the said messuages, &c. sometime since by the direction of the lords commissioners for executing the office of Lord High Admiral of Great Britain caused the same to be offered for sale by private contract, and the said (*purchaser*) became the

Parties.

(1) If the conveyance is intended to be taken to uses to bar dower, see *ante*, No. XXXI. p. 2.

PURCHASES.

Government Commissioners.

purchaser thereof at the sum of £ . AND WHEREAS by a certain order bearing date on or about the day of last past, under the hands of the said (*commissioners*) directed to the said (*purchaser*), the said purchase money is ordered to be paid by him unto the treasurer of his Majesty's navy for the time being, as in and by the said in part recited indenture of release and order, reference being thereunto respectively had, will more fully appear. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £ of good and lawful money of Great Britain and Ireland, current in England, to the said (*treasurer of his Majesty's navy*) for the time being, by virtue and in pursuance of the said hereinbefore in part recited order in that behalf, in hand paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt of whose deputy treasurer for the same is conformably to the usage in such cases indorsed on these presents, in full for the absolute purchase of the said messuages or tenements, hereditaments, and premises hereinbefore described and intended to be by these presents granted and released, and the payment of which said sum of £ by the said (*purchaser*), they the said (*commissioners*) do hereby severally and respectively acknowledge, and thereof and therefrom Do severally and respectively acquit, release, and absolutely discharge the said (*purchaser*), his heirs, executors, and administrators by these presents, and also for and

Order for payment of consideration to treasurer of navy.

WITNESS, consideration of the purchase money paid to treasurer of navy.

PURCHASES.

Government Commissioners.

in consideration of the sum of 5s. a piece of like lawful money to the said (*commissioners*) at the same time paid by the said (*purchaser*), the receipt whereof is hereby acknowledged, they the said (*commissioners*) HAVE and each of them HATH granted, bargained, sold, released, and confirmed, and by these presents DO and each of them DOTH grant, bargain, sell, release, and confirm, unto the said (*purchaser*) and his heirs, ALL that, &c. with all and every the rights, privileges, advantages and appurtenances, to the same premises or any of them, or any part thereof, in any wise appertaining. AND also all houses, outhouses, &c. to the said hereditaments and premises or any part thereof belonging, or in any wise appertaining, or therewith, or with any part or parts thereof respectively, used, occupied or enjoyed, or reputed or taken as part, parcel or member thereof, (all which said messuages, hereditaments, and premises are now in the actual possession of the said (*purchaser*), by virtue of a bargain and sale to them thereof made by the said (*commissioners*) for 5s. consideration, by indenture bearing date the day next before the day of the date of these presents, and executed before the sealing and delivery hereof for one year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and the reversion and reversions, remainder or remainders, and all and singular the rents, issues, and profits, of the said

Nominal consideration of 5s. paid to commissioners. The said commissioners grant, &c.

Parcels.

PURCHASES.

Government Commissioners.

hereditaments and premises, and all the estate, &c. deeds, &c. (*as in other cases*) (1). To HAVE AND TO HOLD the said messuages, lands, tenements, and all and singular other the hereditaments and premises hereinbefore described, and intended to be hereby granted and released, or otherwise assured, with their and every of their rights, members, privileges, and appurtenants, unto the said (*purchaser*) and his heirs, to the use and behoof of him the said (*purchaser*), his heirs and assigns for ever (2). And the said (*commissioners*) for themselves severally and respectively, and for the several and respective heirs, executors, and administrators, do separately and not jointly, or the one for the other or others of them, or the heirs, executors, administrators, or the acts or deeds of the other or others of them, but each and every of them for himself only, and for his own heirs, executors, and administrators, and his and their acts and deeds, covenant and declare, to and with the said (*purchaser*), his heirs and assigns, by these presents, in manner following, that is to say, viz. that they the said (*commissioners*) have not, nor have nor hath any or either of them, each of them covenanting severally as aforesaid, at any time or times heretofore made, done, committed, or executed, or knowingly suffered any act, deed,

To hold to purchaser in fee.

Covenant by commissioners that they have not incumbered.

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(1) See *ante*, p. 419.

Dower.

(2) If the premises are intended to be limited to the purchaser to uses to bar dower, see *ante*, No. XXXI. p. 31.

matter, or thing whatsoever whereby the said messuages, lands, hereditaments and premises hereinbefore granted and released or otherwise assured or intended so to be, or any part thereof, or any estate or interest therein, shall or may be impeached, charged, incumbered, or otherwise prejudicially affected in title, estate, or otherwise howsoever. AND further, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, &c. [*Usual covenants by the commissioners for the title, &c.*] IN WITNESS, &c.

PURCHASES.

Government Commissioners.

*** The receipt for the consideration money is to be signed by the Deputy treasurer of the navy.

Receipt.

PURCHASES.

Consideration, Annuity.

No. LVII.

Conveyance of Freehold Premises *to a Purchaser in Consideration of an* Annuity *or* Rent Charge *to issue out of the Premises* (1).

Parties.

THIS INDENTURE of three parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN *(the vendor)* of, &c. of the first part, *(the purchaser)* of, &c. of the second part, and *(A. B.)* (a trustee named and appointed by and on the part of the said *(vendor)* for the purposes hereinafter mentioned) of the third part. WHEREAS (2), &c. [*Recital of agreement for purchase*]. NOW THIS INDENTURE WITNESSETH, that in pursuance and in performance of the said in part recited agreement, and for and in consideration of an annuity or clear yearly sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland, called England, to be paid

Witness, that in consideration of annuity to be paid to vendor.

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(1) See notes to Vol. VI. first annuity deed.

(2) See *ante*, p. 436.

to the said (*vendor*) during the term of his natural life (*or* the natural lives of, &c. *as the case may be*), and charged upon the said hereditaments in the manner, and payable at the time hereinafter expressed [and also in consideration of the sum of 5*s.* of like lawful money to the said (*vendor*) in hand well and truly paid by the said (*purchaser*), at or immediately before the delivery and sealing of these presents, the receipt whereof is hereby acknowledged], he the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these DOTH grant, bargain, sell, alien, and release, unto the said (*purchaser*) his heirs, and assigns, ALL, &c. or howsoever otherwise, &c. and the reversion, &c. (1). TO HAVE AND TO HOLD the said messuages, lands, and hereditaments, and all and singular other the premises hereinbefore granted and released, or otherwise assured, or intended so to be, with their rights, members, and appurtenances, unto him the said (*purchaser*), his heirs, and assigns for ever. But nevertheless to the uses and for the ends and purposes hereinafter expressed concerning the same (that is to say), to and for the use, intent, and purpose, that he the said (*vendor*) and his assigns shall or may have, receive, and take, yearly and every year, out of and from the same messuages, lands, and hereditaments, and by, out of, or from the rents, issues, and profits thereof, one annuity, yearly

PURCHASES.

Consideration, Annuity.

The vendor grants, &c.

Parcels.

To hold to the purchaser and his heirs.

To the use and intent that vendor may receive thereout said annuity.

(1) See *ante*, p. 418.

PURCHASES. rent charge, or annual sum of £

Consideration, Annuity.

of lawful and current money aforesaid, during the term of the natural life of him the said (*vendor*), (*or as the case may be*), to be paid and payable at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by even and equal quarterly payments on the day of , the day of , the day of , and the day of , in every year, between the hours of eleven and one o'clock in the day-time, and also a due and proportionable part of the said annuity, yearly rent charge, or annual sum, to be computed from the commencement of any quarter in which the said (*vendor*) may happen to die, up to the day of his decease, all and every which payments are to be made without any abatement or deduction whatsoever, and the first of the said payments to be made on the day of next ensuing the date of these presents. [And (*if so agreed*) to and for this further use, intent, and purpose, that upon and immediately after the decease of the said (*vendor*), the said , the wife of the said (*vendor*), in case she shall be then living, shall and may have, receive, and take yearly and every year out of and from the same messuage, lands, and hereditaments, and out of and from the rents, issues, and profits thereof, one like annuity, yearly rent charge, or annual sum of £ during the term of her natural life, payable at the same place, at the like time, and so clear of abatements and deductions as herein-

And like annuity to vendor's wife for her life.

PURCHASES.

Consideration, Annuity.

before is mentioned, for payment of the said annuity, yearly rent charge, or annual sum, to the said (*vendor*) and his assigns, during the term of his natural life; the said last mentioned annuity of £ to commence upon and from the day of the decease of the said (*vendor*), and be paid and payable (or a proportionable part thereof, as the case may require) on the first of the days of payment aforesaid, which shall or may happen next after the decease of him the said (*vendor*)].

Further use and intent to distrain if annuity in arrear twenty-one days.

AND to and for this further use, intent, and purpose, that in case the said first mentioned annuity, yearly rent charge, or annual sum of £ or the said last mentioned annuity, yearly rent charge, or annual sum of £ , or any part of the same, shall at any time happen to be in arrear and unpaid by the space of twenty-one days, next over or after any of the days or times whereon the same are respectively hereinbefore appointed to be paid, then and from thenceforth, and from time to time, as often as the same shall happen, it shall be lawful for the said (*vendor*) or his assigns, or the said ( ) his wife, or her assigns, or his, her, or their lawful attorney or attorneys, from time to time, and when occasion may require, to enter into and upon all and singular the messuages, lands, hereditaments, and premises, hereby charged, or expressed or intended to be charged with the payment of the said annuities, yearly rent charges, or annual sums of £ and respectively, and there to distrain for the same, or such of them as shall be then

PURCHASES.

Consideration, Annuity.

payable and in arrear, and deal and act in and with such distress according to law, and as if such distress were for rent in arrear from a tenant to the landlord of the said premises, to the intent that he the said (*vendor*) and his assigns, and the said ( ) his wife, and her assigns, shall or may respectively be fully paid and satisfied the same respective annuities, yearly rent charges, or annual sums of money, and every part thereof, and all arrears of the same, and all costs, damages, and expenses attending the recovery thereof. AND to this further use, intent, and purpose, that if the said annuities or yearly rent charges, or any part thereof respectively, shall be in arrear or unpaid for the space of forty-one days next after the days or times hereby appointed for payment thereof, then and in such case, and as often as the same shall happen, although no previous demand shall have been made thereof, it shall be lawful for the said (*vendor*) and ( ) his wife respectively, and their respective assigns, into and upon the aforesaid hereditaments and premises, or any part thereof, in the name of the whole to enter, and the same to have, hold, retain, and enjoy the same, and the rents, issues, and profits thereof, to receive and take to and for his, her, or their own respective use and benefit, until he, she, or they shall be thereby or otherwise fully paid and satisfied, so much of the said respective annuities, yearly rent charges, or annual sums as shall be then payable and in arrear, and also such further part thereof as shall become due, during his, her,

Further use and intent to enter if annuity in arrear forty-one days.

PURCHASES.

Consideration, Annuity.

or their possession of the said premises, together with all losses, costs, damages, and expenses whatsoever, which shall have been occasioned by reason or means of the said respective annuities, yearly rent charges, or annual sums having been so in arrears (and every of which possession shall be without impeachment for waste); And subject to the said annuities, yearly rent charges, or annual sums, or such of them as for the time being shall be payable, and to the powers and remedies hereby given for securing and enforcing the payment thereof. To the use of the said (*trustee*), his executors, administrators, and assigns, for the term or period of one hundred years, to commence and be computed from the date of these presents, determinable nevertheless as hereinafter is mentioned; but upon the trusts, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same (that is to say), In trust to allow and permit the said (*purchaser*), his heirs and assigns, to receive and retain the yearly and other profits and rents of the said premises, to and for his and their own proper use and benefit, until some default shall happen to be made in the payment of the said annuities, yearly rent charges, or annual sums of £ and £ , or such of them as for the time being shall be payable, on the days or in the manner hereinbefore appointed for payment thereof. And from and immediately, or at any time after such default shall be made, and of which any notice in writing under the hand of the

And subject to the said annuities.

To the use of a trustee for 100 years.

Upon trust.

To permit purchaser to enjoy till default.

And after default.

PURCHASES. *Consideration, Annuity.*

said (*vendor*) and ( ) his wife respectively, or of his or her assigns, it is hereby agreed shall be sufficient evidence as to all persons whomsoever, save only the said (*purchaser*), his heirs, executors, administrators, and assigns; then upon trust from time to time, and as often as the same shall happen, that he the said (*trustee*), his executors, administrators, and assigns, shall or may receive and take out of the rents, issues, and profits thereof, the same respective annuities, or yearly rent charges, or such part thereof respectively, as shall be then due, payable, and in arrear; and in case the rents and profits of the said premises shall at any such time or times be insufficient to pay and discharge such arrear or arrears, or in case the said premises shall be untenanted for the space of twenty-one days, next after any part of the said annuities, or yearly rent charges, shall respectively be in arrear, then and in either of the said cases, that he the said (*trustee*), his executors, administrators, and assigns, shall or may by mortgage, sale, or other disposition of the said hereditaments and premises, or any part thereof, in such manner, and for such sum or other consideration as he or they shall think proper for the then residue of the said term of years, or by any other lawful means whatsoever, at his or their discretion and pleasure, raise and pay so much of the said annuities, yearly rent charges, or annual sums of £ and £ , as shall be then payable and in arrear, and all expenses occasioned by such mortgage, sale, or other dispo-

Upon trust to receive arrears out of rents, &c.

And if same rent insufficient,

then to raise same by mortgage or sale.

PURCHASES.

Consideration, Annuity.

sition or means as aforesaid, and after full payment of the same, upon trust to pay the surplus of the said monies unto the said (*purchaser*), his executors, administrators, or assigns, or at the free will and pleasure, and by the direction of the said (*vendor*) and ( ) his wife respectively, or their respective assigns, invest the same in the purchase of government or other securities, or of any other annuity or annuities, under or subject to such proper trusts as they respectively, or their respective assigns, or his, her, or their counsel in the law, being of the degree of a barrister, shall require, for securing the payment of any future arrears of the said annuities, yearly rent charges, or annual sums. AND it is hereby expressly declared by the said (*purchaser*), for himself, his heirs, and assigns, that all contracts, conveyances and assurances entered into or made by the said (*trustee*), his executors, administrators, or assigns, in pursuance of the trusts aforesaid, of or concerning the said hereditaments and premises, or any part thereof, shall be good and effectual to all intents and purposes whatsoever, although he the said (*purchaser*), his heirs or assigns, shall not join, or otherwise concur in the same, and also that the receipt of him the said (*trustee*), his executors, administrators, or assigns, shall from time to time be a good and sufficient discharge to the person or persons, to or with whom any such contract, conveyance, or assurance shall at any time and from time to time be made, for the consideration or other money therein expressed to be re-

And after payment invest surplus money in securities.

Trustees' receipts, &c. to discharge purchaser.

PURCHASES.

Consideration Annuity.

ceived; and such person or persons, his or their executors, administrators, or assigns, shall not afterwards be accountable for the same or the application thereof, nor be obliged to inquire into the reason or expediency of making any such mortgage, sale, or other disposition of the said premises, or whether the said annuities, yearly rent charges, or annual sums, or either of them, or any part thereof respectively, shall then be or have been in arrear or not. And subject to the said annuities, yearly rent charges, or annual sums, or such of them as for the time being shall or may be payable, and to the powers and remedies hereby given for the payment thereof, and to the said term of one hundred years hereby demised, then to the use and behoof of the said (*vendor*), his heirs, and assigns, for ever. AND the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*purchaser*), his heirs and assigns, in the manner following (that is to say), [*Add covenants by vendor for the title, &c.*] (1). And the said (*purchaser*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said (*vendor*), his executors, administrators, and assigns, and also with and to the said (*trustee*), his executors, administrators, and assigns, that he the said (*purchaser*), his heirs, executors, administra-

Covenants by vendor for title, &c.

Covenant by purchaser to pay the annuity.

(1) See *ante*, No. LII. p. 424.

Consideration Annuity.

tors, or assigns, shall and will from time to time, during the natural lives of them the said (*vendor*) and ( ) his wife respectively, well and truly pay or cause to be paid the said respective annuities, yearly rent charges, or annual sums of £ and £ , of such lawful and current money as aforesaid, or such of them as for the time being shall be payable, upon the days hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents. [And also that he the said (*purchaser*), his heirs and assigns, shall and will, at all times during the continuance of the said term of one hundred years, or during such part or period thereof as either of the said annuities or yearly rent charges of £ and £ shall be subsisting and payable out of the premises hereby chargeable with the payment thereof, maintain and keep (1)]. AND further, that in case any default shall be made in payment of the said annuities, or yearly rent charges, of £ and £ , or either of them, contrary to the true intent and meaning hereof, it shall be lawful for the said (*vendor*) and ( ) his wife respectively, or their respective assigns, and the said (*trustee*), his executors, administrators, or assigns, from time to time and at all times, to enter into

Quiet enjoyment after default.

(1) If the premises consist wholly or chiefly of houses or buildings, add covenant to keep them repaired and insured, as *ante*, No. LL. p. 408.

PURCHASES.

Consideration Annuity.

and upon, and peaceably hold and enjoy the messuages, lands, hereditaments, and premises hereby demised, and receive and take the rents, issues, and profits thereof, to the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same, under and according to the purport and true intent and meaning of the powers, provisoes, trusts, declarations, and agreements hereinbefore contained or expressed concerning the same, and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or effectually protected and indemnified by the said (*purchaser*), his heirs, executors, administrators, and, assigns, of, from, and against all former and other gifts, grants, mortgages, annuities, demises, rents, estates, rights, titles, charges, and incumbrances whatsoever. AND moreover, that he the said (*purchaser*), his heirs, executors, administrators, and assigns, and all persons claiming or possessing any estate, right, title, or interest in or to the hereditaments and premises hereby demised, or mentioned or intended so to be as aforesaid, or any part thereof, shall and will from time to time, and at all or any times hereafter, at the reasonable request of the said (*vendor*) and ( ) his wife, or their respective assigns, but at the expense of the said (*purchaser*), his heirs or assigns, make, do, and execute, all and every such further and other lawful and reasonable grants, assignments, conveyances, appointments, matters, and things whatsoever, whether by fine, recovery,

Covenant for further assurance.

PURCHASES.

Consideration Annuity.

or otherwise, for the further, better, or more satisfactorily granting, securing, and confirming, unto them the said (*vendor*) and ( ) his wife, or either of them respectively, or their respective assigns, the respective annuities, or yearly rent charges of £ and £ , mentioned or intended so to be hereby granted, and for making the hereditaments and premises hereby demised chargeable with the payment thereof, and for demising the same hereditaments and premises, with their appurtenants, unto the said (*trustee*), his executors, administrators, or assigns, for all the residue which shall be then to come of the said term of years, upon the trusts, and for the intents and purposes aforesaid, or any or either of the said purposes, and also for conveying and assuring all or any of the said demised premises to any mortgagee, purchaser, grantee, or assignee thereof, as they the said (*vendor*) and ( ) his wife respectively, or their respective assigns, or his, her, or their counsel in the law shall require on their behalf.

Trustee to reimburse himself expenses.

PROVIDED ALWAYS, and the said (*purchaser*) doth hereby declare and agree, that he the said (*trustee*), his executors, or administrators, shall and may retain and reimburse himself and themselves by any of the means hereinbefore provided or mentioned all reasonable costs, charges, and expenses, to be liberally estimated as between attorney and client, which he or they may have sustained or paid in the execution of the powers or trusts hereby in him or them reposed, and that he or

PURCHASES.

Consideration Annuity.

they shall not be chargeable with or for any loss or damage which may happen to the said trust premises, or any monies which may come to his or their hands by virtue of these presents, unless the same shall happen through his or their wilful or voluntary default or negligence. IN WITNESS, &c.

PURCHASES.

Consideration Fee-farm Rent.

No. LVIII.

Conveyance of Freehold Premises *to a* Purchaser, in part *Consideration of a Fee-farm Rent reserved to the* Vendor (1).

THIS INDENTURE, made the day of in the year, &c. and in the year of our Lord BETWEEN (*the vendor*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part. WHEREAS the said (*vendor*) hath contracted with the said (*purchaser*) for the absolute sale to him of the messuages, lands, and hereditaments hereinafter described, for the sum of £ and in consideration of a further yearly rent or annual sum of £ to be reserved and paid thereout to him the said (*vendor*) and his heirs as hereafter is expressed. NOW THIS INDENTURE WITNESSETH that for and in consideration of the sum of £ of lawful current money of that part

Parties.

Contract for purchase.

Witness, vendor in consideration of 5*s.* and covenants after contained.

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(1) This precedent was prepared by a gentleman of eminence, for the purpose of entitling the vendor by means of the reservation to vote for a ministerial office, for which the rent was a qualification, and is inserted here with a view of its serving a like purpose on other occasions.

PURCHASES. of the United Kingdom of Great Britain and Ireland called England, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at the time of the sealing and delivery of these presents, the receipt whereof the said (*vendor*) doth hereby acknowledge, and also for and in consideration of the reservation, provisoes, and agreements, thereinafter contained, HE the said (*vendor*) HATH granted, bargained, sold, and released, and by these presents DOTH grant, bargain, sell, release, and confirm unto the said (*purchaser*), and his heirs, ALL that messuage, &c. (And all such other hereditaments, if any, as are described in the indenture of bargain and sale for a year hereinafter referred to); Together with all and every the rights, privileges, easements, advantages, and appurtenants whatsoever to the said messuage and hereditaments belonging, or in anywise appertaining, or therewith now or heretofore holden, used, occupied, or enjoyed, (all which said hereditaments and premises are now in the possession of, or legally in the said (*purchaser*) by virtue of a bargain and sale to him thereof made by the said (*vendor*) by indenture bearing date the day next before the date of these presents, (for five shillings consideration) for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute for transferring uses into possession), and the reversion and reversions, remainder and remainders, and rents, issues, and profits, of the same premises. AND all the estate, right, title, and in-

Consideration Fee-farm Rent.

Grants, &c.

terest whatsoever of him the said (*vendor*) in, to, or concerning the same: [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate unto the same hereditaments, alone or together with other property of inferior value, now or hereafter being or to be in the possession or lawful power of the said (*vendor*) his heirs, executors, or administrators, or of any person or persons from whom he, they, or any of them can or may procure the same, without action or suit at law or in equity, and true and attested copies, (duly stamped) when and as the said (*purchaser*), his heirs or assigns, shall require the same, of all other deeds, muniments, writings, and evidences (if any) not being of record, which now are or hereafter shall or may be so in his, their, or any of their possession, custody, or power as aforesaid, in any wise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments, or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same].

Consideration Fee-farm Rent.

TO HAVE AND TO HOLD the messuage, &c. hereditaments, and premises hereinbefore described, and by these presents granted and released, or otherwise assured, or mentioned, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*) and his heirs, to the only proper use and behoof of him

To HOLD to the purchaser in fee.

PURCHASES.

Consideration Fee-farm Rent.

Yielding, &c. the annual sum of £ to vendor and his heirs.

the said (*purchaser*) his heirs and assigns for ever, yielding and paying therefore yearly and every year unto the said (*vendor*), his heirs and assigns for ever, the yearly rent or sum of £ of such lawful and current money as hereinbefore is mentioned, by half yearly payments to be made on the day of and the day of in every year, free and clear of and from all abatements and deductions whatsoever, the first of the said half yearly payments to be made on the day of next ensuing the date of these presents.

Covenant by purchaser to pay the rent-charge.

AND the said (*purchaser*), for himself, his heirs, and assigns, doth hereby covenant, promise, and agree to and with the said (*vendor*) his heirs and assigns, in the manner following, that is to say, that he the said (*purchaser*) his heirs or assigns, shall and will from time to time for ever hereafter, well and truly pay, or cause to be paid unto the said (*vendor*) his heirs and assigns, the said yearly rent or sum of £ of lawful current money aforesaid, clear and free of and from all deductions and abatements whatsoever, on the several days and times, and in the manner hereinbefore mentioned for payment thereof, and according to the true intent and meaning of these presents.

Power of distress, &c. on default.

PROVIDED ALWAYS, and these presents are upon this express condition nevertheless, that if the said yearly rent of £ hereinbefore reserved, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next after either of the days appointed for the payment thereof, then, and from thenceforth, and from time

to time, as often as the same shall happen, it shall be lawful for the said (*vendor*), his heirs and assigns, into and upon the said piece or parcel of ground, hereditaments, and premises, or any of them, or any part thereof, in the name of the whole to enter and distrain, and the distress and distresses there found to deal with according to law, until and to the end and intent that the said yearly rent and all arrears thereof, and all costs, charges, and expenses attending the recovery of the same, shall be fully satisfied and paid. PROVIDED ALSO, and these presents are upon this further condition, that if the said yearly rent of £ or any part thereof shall be behind and unpaid by the space of twenty-one days next after the same ought to be paid as aforesaid, and no sufficient distress or distresses for the purposes aforesaid then is, or are, or can be had or found in or upon the said premises, then and immediately or at any time thereafter, it shall be lawful for the said (*vendor*), his heirs, or assigns, to enter into and upon the said piece or parcel of ground, hereditaments, and premises, as of his and their former estate, and then and in that case the grant and release, or other assurance hereby made, and the covenants for quiet enjoyment and further assurance of the said premises, hereinafter contained, shall thenceforth cease and be utterly void to all intents and purposes whatsoever. AND the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, grant, and agree with and to the said (*purchaser*), his heirs, and

Consideration Fee-farm Rent.

Covenants by vendor for title, &c.

PURCHASES.

Consideration Fee-farm Rent.

assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever, made, done, executed, or knowingly suffered, or omitted by him the said (*vendor*) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is seised of, or well entitled to, in his own right, and hath full and lawful and absolute power and title to grant, bargain, sell, release, and confirm, all and singular the hereditaments and premises hereinbefore granted and released, or otherwise assured, or mentioned, or intended so to be, and the possession, reversion, and inheritance thereof, unto and to the use and behoof of the said (*purchaser*), his heirs, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND that he the said (*purchaser*) his heirs and assigns, shall or lawfully may from time to time, and at all times hereafter, (he and they well and truly observing and performing all and every the covenants and agreements hereinbefore contained, which on his or their part are required to be observed and performed respectively), enter into and upon, and hold and enjoy all and singular the same hereditaments and premises, with their appurtenants, and receive and retain the rents and profits thereof, for his and their own use and benefit, without any manner of hindrance, disturbance, claim, or demand whatsoever, by or through the said (*vendor*), or his heirs, or any person or persons rightfully claiming from, under, or in trust for him or them; AND that

Consideration Fee-farm Rent.

free and clear, or by the said (*vendor*), his heirs, executors, or administrators, effectually protected and defended, from and against all former and other grants, bargains and sales, releases, conveyances and assurances, and all other estates, charges, liens, and incumbrances whatsoever, by him the said (*vendor*), or any of his ancestors, or any person or persons claiming under him or them, made, executed, or knowingly occasioned or suffered. AND moreover, that he the said (*vendor*), and his heirs, and all persons claiming under or in trust for him or them, shall and will from time to time, and at all times hereafter, until some breach, or non-performance, or non-observance shall be made, take place, or happen, of or in some or one of the covenants, stipulations, or agreements on the part of the said (*purchaser*), his heirs or assigns, to be performed or observed, upon every reasonable request, and at the costs and expense of the said (*purchaser*), his heirs or assigns, make, do, execute and perfect all such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever, for the better, and better or more satisfactorily conveying and assuring the same hereditaments and premises or any part thereof, with their rights, members, and appurtenants, unto, or to and for the use of the said (*purchaser*), his heirs or assigns, in such manner and form as he or they, or his or their counsel in the law shall advise and require. IN WITNESS, &c.

No. LIX.

Conveyance of Freeholds *to a* Purchaser *from a* Mortgagee in Fee, *after Forfeiture, subject to the Mortgagor's Equity of Redemption.*

THIS INDENTURE made the day of (1) in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor, being the mortgagee*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part. WHEREAS by indentures of lease and release, bearing date respectively the and days of , which was in the year , the release being made or expressed to be made between the (*mortgagor*) of, &c. of the one part, and the said (*vendor*) of the other part, the said (*mortgagor*) in consideration of the sum of £ then advanced to him by the said (*vendor*) by way of loan, and at interest after the rate therein mentioned, conveyed and assured unto and to the use of the said (*vendor*) his heirs and assigns, ALL, &c. subject nevertheless

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Mortgage debt.

(1) For a precedent of assignment of a mortgage debt to a purchaser, and of premises mortgaged by demise or assignment, see *post*, Vol. III.

PURCHASES.

Mortgagee, of his legal Title.

to a proviso in the said indenture of release contained, that if the said (*mortgagor*) his heirs, executors, or administrators should pay or cause to be paid unto the said (*vendor*) his executors, administrators, or assigns the said sum of £ with interest for the same, after the rate of £ 5 per cent. per annum, on the day of next ensuing the date thereof, then the said indenture should cease and be void. AND WHEREAS the said principal sum of £ was not paid at the time in the said in part recited indenture appointed for that purpose, nor hath the same since been paid, wherefore the estate and interest of the said (*mortgagee*) therein became and still is absolute at law. AND WHEREAS the further sum of £ is now also due to the said (*mortgagee*) for years arrears of interest upon the said sum, making together the sum of £ , and no tender of the same or any part thereof, or any claim to the redemption of the said premises, has ever yet been made by the said (*mortgagor*) or any person on his behalf to the knowledge or belief of the said (*vendor*), as he the said (*vendor*) doth hereby express, assert, and declare. AND WHEREAS the said (*vendor*) hath been for the space of years and upwards in the possession and actual enjoyment of the said mortgaged premises under or by virtue of a judgment in ejectment obtained against the said (*mortgagor*) as of term in the year of his present majesty, for or concerning the same, but no decree of foreclosure or other bar to any the equity of redemption which the said

PURCHASES.

Mortgagee, of his legal Title.

(*mortgagor*) may have therein, has been obtained or sought for by the said (*vendor*). AND WHEREAS the said (*vendor*) hath contracted with the said (*purchaser*) for the sale and conveyance to him of the said hereditaments, subject to such equity of redemption, if any, as the said (*mortgagor*) may have therein, at or for the sum of £ . NOW THIS INDENTURE WITNESSETH,

Witness, (mortgagee vendor) bargains, sells, &c. to purchaser.

that in consideration of the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the absolute purchase of the messuages and hereditaments hereinafter described, subject to the equity of redemption (if any) of the said (*mortgagor*), the said (*vendor*) doth hereby acknowledge, and of and from the same doth acquit, release, exonerate, and for ever discharge the said (*purchaser*) his heirs, executors, administrators, and assigns by these presents, He the said (*vendor*) HATH bargained, sold, aliened, and released, and by these presents DOTH bargain, sell, alien, and release unto the said (*purchaser*) his heirs and assigns,

Parcels.

ALL and every the messuages, lands, tenements, hereditaments, and premises in or by the hereinbefore in part recited indentures of lease and release, or either of them, comprised or described and thereby granted and released, or otherwise assured to him the said (*vendor*) by way of mort-

PURCHASES.

gage as hereinbefore is recited or expressed, (and which said hereditaments are now in the legal possession of the said (*purchaser*) by virtue of a bargain and sale for a year to him thereof made by the said (*vendor*) for five shillings consideration, by indenture bearing date the day next before the day of the date of these presents), and the reversion and reversions, remainder and remainders, of and in the same hereditaments and premises, and all the estate, right, title, and interest whatsoever, of him the said (*vendor*) therein or thereto, under or by virtue of the said hereinbefore in part recited indentures of lease and release, or otherwise howsoever; TOGETHER also with the said indentures, and all and every other the deeds, writings, and evidences of title whatsoever, in any wise relating to the same premises, or any part thereof, which at, before, or after the time of the execution of the said indentures were or was delivered unto him the said (*vendor*). TO HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*) and his heirs, to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever; but subject nevertheless to such equity or right of redemption (if any) as the same premises are now subject or liable to under or by

Mortgagee, of his legal Title.

To HOLD to the purchaser and his heirs.

Subject to mortgagor's equity of redemption.

PURCHASES.

Mortgagee, of his legal Title.

FURTHER WITNESS. Assignment of money due on the premises.

virtue of the said in part recited indentures of lease and release by way of mortgage, or any proviso or agreement for redemption therein contained, or otherwise howsoever. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, He the said (*vendor*) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*purchaser*) his executors, administrators, and assigns, ALL and every principal, interest, and other sum and sums of money which now is or are, or hereafter shall or may grow, become, or be due and owing upon, or secured or expressed or intended to be secured by or by means of the hereditaments hereinbefore described, and granted and released, or otherwise assured or intended so to be, or any part thereof, or by the said in part recited indentures by way of mortgage; and all the right, title and interest, property, possession, benefit of foreclosure, and other claims and demands whatsoever, both at law and in equity, of him the said (*vendor*), to or concerning the said monies and premises, or any part of the same respectively. To have, hold, receive, take, and enjoy the said principal, interest, and other sum and sums of money, and premises hereinbefore assigned, or otherwise lastly hereby assured, or intended so to be, unto and by him the said (*purchaser*) his executors, administrators, and assigns, from henceforth for ever, as and for his and their own proper monies and effects,

To HOLD to purchaser, his executors, &c.

and to and for his and their own use and benefit, with full power and authority for him the said (*purchaser*) his executors, administrators, and assigns, to recover and receive the said principal and other sum and sums of money, and in the name of him the said (*vendor*) his executors or administrators, good and sufficient receipts, acquittances, and discharges, to make and give for the same, and otherwise act in or concerning the premises aforesaid, or any or either of them, as fully and effectually in all things as he the said (*vendor*) his heirs, executors, or administrators, could or might do or have done if these presents had not been made; he the said (*vendor*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm (being from time to time and at all times indemnified and saved harmless from and against all loss, cost, charges, damages, and expenses, by reason or in respect thereof), all and whatsoever his said attorney or attorneys shall lawfully do or cause to be done in or about the premises by virtue of these presents. AND the said (*vendor*) doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and declare to and with the said (*purchaser*) his heirs, executors, administrators, and assigns, in the manner following, that is to say, that he the said (*vendor*) hath not at any time heretofore made, done, executed, or committed, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuages, lands, and hereditaments hereinbefore released or otherwise as-

Mortgagee, of his legal Title.

Power of attorney.

Covenant by vendor for title, &c.

PURCHASES.

Mortgagee, of his legal Title.

sured, or intended so to be, or any part thereof, are or is, or can, shall, or may be impeached, charged, incumbered, or prejudicially affected, in any manner howsoever, (the said in part recited indenture by way of mortgage only excepted), or whereby or by means whereof the said principal sum of £ so secured thereupon, or the said sum of £ for interest thereof, or any part of the same respectively, now are or is, or hereafter can, shall, or may be released or discharged in any manner howsoever, or whereby or by reason or means whereof any action, suit, or other legal or equitable proceeding, means or expedients to be commenced, prosecuted or taken by the said (*purchaser*) his heirs, executors, administrators, or assigns, for the obtaining possession of or foreclosing any right or equity of redemption in the said hereditaments or any part thereof, shall, can, or may be discharged, frustrated, defeated, or impeded in any manner howsoever. AND further that he the said (*mortgagee*) now hath in himself good right, full power, and lawful and absolute title and authority to bargain, sell, and assign the said hereditaments and premises, with their appurtenances, unto the said (*purchaser*) his heirs, executors, administrators, and assigns respectively, in the manner aforesaid, and according to the true intent and meaning of these presents; And moreover that he the said (*vendor*) his heirs, executors, and administrators, and all and every person or persons now or at any time hereafter claiming by, from, under, or in trust for him or them,

PURCHASES.

Mortgagee, of his legal Title.

shall and will from time to time, and at all times during the space of years hereafter, upon the request, and at the costs and expense of the said (*purchaser*) his heirs, executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely or satisfactorily bargaining, selling, releasing, assigning, and assuring the hereditaments and premises hereinbefore bargained, sold, released, assigned, or otherwise assured respectively, or intended so to be (subject only to such equity or right of redemption, if any, as aforesaid) unto the said (*purchaser*) his heirs, executors, administrators, and assigns, according to the nature and quality of the same premises respectively, for his and their own use and benefit, in such manner and form as he or they, or his or their counsel in the law shall reasonably advise or require. IN WITNESS, &c.

PURCHASES.

Sale under Writ of Extent.

No. LIX. (A)

Conveyance by Deputy Remembrancer *of the Court of* Exchequer *under an Extent from the Crown* (1).

THIS INDENTURE made the day of in the &c. and in the year of our Lord . BETWEEN (*the deputy remembrancer*) Deputy Remembrancer of his Majesty's Court of Exchequer at Westminster, of the first part, (*the debtor*) of &c. (2) of the second part, and (*the purchaser*) of &c. of the third part. WHEREAS, by a writ of extent bearing date the day of in the year of the reign of his present Majesty, issued out of his Majesty's Court of Exchequer, in pursuance of an inquisition duly taken in that behalf, it was found that the said (*vendor*) was on the day of taking the said inquisition justly indebted to his Majesty in the sum of £ money, arising from parliamentary assessed taxes, and otherwise, as therein mentioned. AND WHEREAS by an in-

Recital of writ of extent.

Recital of inquisition taken.

(1) See 25. Geo. 3, cap. 35.

Debtor.

(2) It is not essential that the debtor should be a party, but he is usually made for the same reason that a bankrupt is in a conveyance by his assignees.

Sale under Writ of Extent.

quisition taken on the day of in the year of the reign of his present Majesty, before the sheriff of the county of by virtue of the said writ of extent, it was found that the said (*vendor*) was then seised in his demesne as of fee (amongst other hereditaments in the said inquisition set forth), of the several freehold messuages and tenements hereinafter particularly described, and which the said sheriff had seized and taken into his Majesty's hands, according to the command of the said writ. AND WHEREAS by an act of parliament passed in the 25th year of the reign of his late Majesty King George the Third, entitled 'an Act for the more easy and effectual sale of lands, tenements, and hereditaments of crown debtors or their sureties,' it was enacted that it should be lawful for his Majesty's Court of Exchequer, and the same Court was hereby authorized, on the application of his Majesty's Attorney General, to order that the estate and interest of any debtor to his Majesty, his heirs, or successors, and the estate and interest of the heirs and assigns of such debtor in any lands, tenements, and hereditaments which might thereafter be extended under or by virtue of any writ of extent, should be sold in such manner as the said Court should direct. And that when a purchaser or purchasers should be found, the conveyance of the lands, tenements, and hereditaments so directed to be sold, should be made to the purchaser or purchasers by his Majesty's Remembrancer of the said Court of Exchequer, or by his

Recital of act 25 of Geo. III.

PURCHASES. Deputy, under the direction of the said Court, by a deed of bargain and sale to be enrolled in the said Court, and that from and after the making of such conveyance and the enrolment thereof as aforesaid, the bargainee or bargainees in such conveyance, and his or their heirs, executors, administrators, and assigns, should have, hold, and enjoy the lands, tenements, and hereditaments therein comprised for his and their own respective use and benefit, not only against the extent of the crown, but also against such debtor of the crown, his surety or sureties, and all persons claiming under him or them, unless by a title paramount to and available in law against such extent as aforesaid. AND WHEREAS by an order of his Majesty's Court of Exchequer, bearing date the day of upon a motion of his Majesty's Attorney General on behalf of his Majesty, praying that the said extended premises might be sold pursuant to the directions of the said act, IT WAS ORDERED that all the estate, right, title, and interest of him the said (*debtor*) of and in the said extended freehold messuages, lands, tenements, and hereditaments should be forthwith sold before esquire, the Deputy Remembrancer of the said Court, in such manner as he should direct, in order to satisfy the debt due to his said Majesty, so far as the money to be produced by such sale would extend, and that all proper parties should join in such sale. AND IT WAS FURTHER ORDERED, that when a purchaser or purchasers should be found for the said ex-

Sale under Writ of Extent.

Recital of order of sale.

Sale under Writ of Extent.

tended premises, the said (*deputy remembrancer*) should make his report or reports to the said Court concerning the same. AND WHEREAS, in pursuance of the said order, the said lands and hereditaments were put up to sale on the day of now last past, before the said (*deputy remembrancer*) at the public sale room, in in one lot or parcel (*or* in several lots or parcels, *as the case was*) at which sale the said (*purchaser*) became and was declared to be the highest bidder and the purchaser thereof (*or* of lot No. in certain printed particulars of the said estates there exhibited) at the sum of £ . And the said (*deputy remembrancer*) by his report made in the said cause, bearing date the day of last past, certified and allowed the said (*purchaser*) to be the purchaser of the said premises, at the said sum of £ . AND WHEREAS by an order of the said Court, bearing date the day of , the report of the said Deputy Remembrancer was confirmed *nisi*, &c. and by a subsequent order of the same Court, bearing date the day of then next following, the said order was made absolute and confirmed, and the said (*purchaser*) was declared and established the purchaser of the said hereditaments, at the aforesaid sum of £ and all proper parties were thereby directed to join in the conveyance thereof; which said conveyance was to be settled by the said Deputy Remembrancer, in case the parties should differ about the same; AND WHEREAS the

Recital of sale.

Recital of deputy remembrancer's report.

Confirmation of deputy remembrancer's report.

PURCHASES.

Sale under Writ of Extent.

said *(purchaser)*, in conformity to the said order, hath, on the day of the date hereof, paid unto the said Deputy Remembrancer the said sum of £ in full of the said purchase money for the said hereditaments.

Deputy remembrancer's approval.

AND WHEREAS the said Deputy Remembrancer hath, at the request of the parties hereto, perused and settled, and hath approved of these presents engrossed on skins of parchment, and in testimony of his approbation of the same hath set his name in the margin of each of the first of the said skins, and his name and allowance to or upon the last skin hereof.

Witness, &c. in consideration of purchase money paid to deputy remembrancer he bargains and sells.

NOW THIS INDENTURE WITNESSETH, that in pursuance of and in obedience to the hereinbefore in part recited order of the said Court of Exchequer, so far as relates to the hereditaments hereinafter described, and intended to be hereby bargained and sold, or otherwise assured, and for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, in hand well and truly paid by the said *(purchaser)*, to the said *(deputy remembrancer)* at or immediately before the sealing and delivery of these presents, as by the certificate of the said Deputy Remembrancer, bearing even date herewith, and filed, or intended to be filed in the registrar's office of the said Court, a true and exact copy whereof is or is intended to be hereupon indorsed, [the payment of which said sum of £ in the manner and by the authority aforesaid, and that the same is in full for the ab-

solute purchase of all his estate and interest in the said hereditaments and premises, the said (*debtor*) doth hereby acknowledge], He the said (*deputy remembrancer*) HATH, in pursuance of the hereinbefore in part recited act and order respectively, bargained and sold, and by these presents DOTH bargain and sell, [and the said (*debtor*), at the request of the said (*purchaser*), and in consideration of five shillings of lawful money aforesaid, to him in hand at the same time paid by the said (*purchaser*), hath granted, bargained, sold, quit claimed, and confirmed, and by these presents doth grant, bargain, sell, quit claim, and confirm,] unto the said (*purchaser*) and his heirs, ALL, &c. TOGETHER with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, gardens, ways, paths, passages, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, rights and privileges of common of every kind, and all] and of all manner of [other] rights, privileges, advantages, appendances, and appurtenances, whatsoever, to the said hereditaments and premises, or any part thereof belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any part thereof, now or heretofore holden, used, occupied, or enjoyed. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of them the said (*deputy remembrancer*) and (*debtor*) respectively, in, to, out of, upon, or concerning the same

PURCHASES.

Sale under Writ of Extent.

And debtor confirms.

Parcels.

General appurtenances.

PURCHASES.

Sale under Writ of Extent.

To hold to the purchaser in fee simple.

premises or any part thereof. To HAVE AND TO HOLD the said messuages, lands, hereditaments, and premises hereinbefore described, and hereby bargained and sold, or otherwise assured or intended so to be, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*), and his heirs, to and for the use and behoof of him the said (*purchaser*), his heirs and assigns for ever (1). IN WITNESS, &c.

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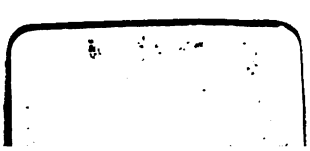
(1) If the purchaser is desirous of taking to uses to bar dower, see *ante*, No. XXXI. p. 31.

*** This deed is required by the act of 25 Geo. III. to be enrolled in the Court of Exchequer.

END OF VOL. II.